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## Off

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#### Restrictions are prohibitions --- the aff is distinct

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Vote neg---

#### Neg ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference

#### Limits---there are an infinite number of small hoops they could require the president to jump through---overstretches our research burden

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#### Courts affs have to specify the grounds

Dragich 95 - Martha J. Dragich, Associate Professor of Law at Missouri-Columbia, 2-1995 44 Am. U.L. Rev. 757

Opinions also permit readers to view the law in historical context. Insofar as opinions identify the precedents on which the court relied, they allow readers to form an understanding of the law's maturity. 164 In addition, the highly specialized citators on which legal research depends allow readers to gauge the continuing vitality of a decision [\*784] based on the frequency and approval with which it is cited. 165 Often, the determination whether or not a particular opinion is lawmaking cannot be made until years later, when further developments in the law demonstrate what the authoring judge could not forecast. 166 Moreover, the lasting authority of a decision depends largely on the quality of its reasoning, which can be evaluated only by reading the opinion. At a minimum, the tasks of researching and applying the law require that the law be findable and knowable, that the precedential value of prior decisions be ascertainable with some degree of reliability, and that prior decisions provide guidance for future cases. These conditions, in turn, can be satisfied only by the publication of judicial opinions stating the facts of the case, the issues considered, the court's reasoning, and the result.

#### Vote neg – all ground and education revolve around judicial reasoning

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#### Court interference in national security decks effective executive responses to prolif, terror, and the rise of hostile powers---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

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#### The plan identifies the non-Western world as a space devoid of the rule of law---makes aggressive colonial and neoliberalism violence inevitable

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

Within this framework, Western law has constantly enjoyed a dominant position during the past centuries and today, thus being in the position to shape and bend the evolution of other legal systems worldwide. During the colonial era, continental-European powers have systematically exported their own legal systems to the colonized lands. During the past decades and today, the United States have been dominating the international arena as the most powerful economic power, exporting their own legal system to the ‘periphery’, both by itself and through a set of international institutions, behaving as a neo-colonialist within the ideology known as neoliberalism. ¶ Western countries identify themselves as law-abiding and civilized no matter what their actual history reveals. Such identification is acquired by false knowledge and false comparison with other peoples, those who were said to ‘lack’ the rule of law, such as China, Japan, India, and the Islamic world more generally. In a similar fashion today, according to some leading economists, Third World developing countries ‘lack’ the minimal institutional systems necessary for the unfolding of a market economy. ¶ The theory of ‘lack’ and the rhetoric of the rule of law have justified aggressive interventions from Western countries into non-Western ones. The policy of corporatization and open markets, supported today globally by the so-called Washington consensus3, was used by Western bankers and the business community in Latin America as the main vehicle to ‘open the veins’ of the continent—to borrow Eduardo Galeano’s metaphor4—with no solution of continuity between colonial and post-colonial times. Similar policy was used in Africa to facilitate the forced transfer of slaves to America, and today to facilitate the extraction of agricultural products, oil, minerals, ideas and cultural artefacts in the same countries. The policy of opening markets for free trade, used today in Afghanistan and Iraq, was used in China during the nineteenth century Opium War, in which free trade was interpreted as an obligation to buy drugs from British dealers. The policy of forcing local industries to compete on open markets was used by the British empire in Bengal, as it is today by the WTO in Asia, Africa, and Latin America. ¶ Foreign-imposed privatization laws that facilitate unconscionable bargains at the expense of the people have been vehicles of plunder, not of legality. In all these settings the tragic human suffering produced by such plunder is simply ignored. In this context law played a major role in legalizing such practices of powerful actors against the powerless.5 Yet, this use of power is scarcely explored in the study of Western law. ¶ The exportation of Western legal institutions from the West to the ‘rest’ has systematically been justified through the ideological use of the extremely politically strong and technically weak concept of ‘rule of law’. The notion of ‘rule of law’ is an extremely ambiguous one. Notwithstanding, within any public discussion its positive connotations have always been taken for granted. The dominant image of the rule of law is false both historically and in the present, because it does not fully acknowledge its dark side. The false representation starts from the idea that good law (which others ‘lack’) is autonomous, separate from society and its institutions, technical, non-political, non-distributive and reactive rather than proactive: more succinctly, a technological framework for an ‘efficient’ market. ¶ The rule of law has a bright and a dark side, with the latter progressively conquering new ground whenever the former is not empowered by a political soul. In the absence of such political life, the rule of law becomes a cold technology. Moreover, when large corporate actors dominate states (affected by a declining regulatory role), law becomes a product of the economy, and economy governs the law rather than being governed by it.

#### Global movements against neoliberalism will be effective now---the plan’s consolidation of U.S.-driven economic orthodoxy causes extinction

Vandana Shiva 12, founder of the Research Foundation for Science, Technology and Ecology, Ph.D. in Philosophy from the University of Western Ontario, chairs the Commission on the Future of Food set up by the Region of Tuscany in Italy and is a member of the Scientific Committee which advises President Zapatero of Spain, March 1, 2012, “Imposed Austerity vs Chosen Simplicity: Who Will Pay For Which Adjustments?,” online: http://www.ethicalmarkets.com/2012/03/01/imposed-austerity-vs-chosen-simplicity-who-will-pay-for-which-adjustments/

The dominant economic model based on limitless growth on a limited planet is leading to an overshoot of the human use of the earth’s resources. This is leading to an ecological catastrophe. It is also leading to intense and violent resource grab of the remaining resources of the earth by the rich from the poor. The resource grab is an adjustment by the rich and powerful to a shrinking resource base – land, biodiversity, water – without adjusting the old resource intensive, limitless growth paradigm to the new reality. Its only outcome can be ecological scarcity for the poor in the short term, with deepening poverty and deprivation. In the long run it means the extinction of our species, as climate catastrophe and extinction of other species makes the planet un-inhabitable for human societies. Failure to make an ecological adjustment to planetary limits and ecological justice is a threat to human survival. The Green Economy being pushed at Rio +20 could well become the biggest resource grabs in human history with corporations appropriating the planet’s green wealth, the biodiversity, to become the green oil to make bio-fuel, energy plastics, chemicals – everything that the petrochemical era based on fossil fuels gave us. Movements worldwide have started to say “No to the Green Economy of the 1%”.

But an ecological adjustment is possible, and is happening. This ecological adjustment involves seeing ourselves as a part of the fragile ecological web, not outside and above it, immune from the ecological consequences of our actions. Ecological adjustment also implies that we see ourselves as members of the earth community, sharing the earth’s resources equitably with all species and within the human community. Ecological adjustment requires an end to resource grab, and the privatization of our land, bio diversity and seeds, water and atmosphere. Ecological adjustment is based on the recovery of the commons and the creation of Earth Democracy.

The dominant economic model based on resource monopolies and the rule of an oligarchy is not just in conflict with ecological limits of the planet. It is in conflict with the principles of democracy, and governance by the people, of the people, for the people. The adjustment from the oligarchy is to further strangle democracy and crush civil liberties and people’s freedom. Bharti Mittal’s statement that politics should not interfere with the economy reflects the mindset of the oligarchy that democracy can be done away with. This anti-democratic adjustment includes laws like homeland security in U.S., and multiple security laws in India.

The calls for a democratic adjustment from below are witnessed worldwide in the rise of non-violent protests, from the Arab spring to the American autumn of “Occupy” and the Russian winter challenging the hijack of elections and electoral democracy.

And these movements for democratic adjustment are also rising everywhere in response to the “austerity” programmes imposed by IMF, World Bank and financial institutions which created the financial crisis. The Third World had its structural Adjustment and Forced Austerity, through the 1980s and 1990s, leading to IMF riots. India’s structural adjustment of 1991 has given us the agrarian crisis with quarter million farmer suicides and food crisis pushing every 4th Indian to hunger and every 2nd Indian child to severe malnutrition; people are paying with their very lives for adjustment imposed by the World Bank/IMF. The trade liberalization reforms dismantled our food security system, based on universal PDS. It opened up the seed sector to seed MNCs. And now an attempt is being made through the Food Security Act to make our public feeding programmes a market for food MNCs. The forced austerity continues through imposition of so called reforms, such as Foreign Direct Investment (FDI) in retail, which would rob 50 million of their livelihoods in retail and millions more by changing the production system. Europe started having its forced austerity in 2010. And everywhere there are anti-austerity protests from U.K., to Italy, Greece, Spain, Ireland, Iceland, and Portugal. The banks which have created the crisis want society to adjust by destroying jobs and livelihoods, pensions and social security, public services and the commons. The people want financial systems to adjust to the limits set by nature, social justice and democracy. And the precariousness of the living conditions of the 99% has created a new class which Guy Standing calls the “Precariate”. If the Industrial Revolution gave us the industrial working class, the proletariat, globalization and the “free market” which is destroying the livelihoods of peasants in India and China through land grabs, or the chances of economic security for the young in what were the rich industrialized countries, has created a global class of the precarious. As Barbara Ehrenreich and John Ehrenreich have written in “The making of the American 99%”, this new class of the dispossessed and excluded include “middle class professional, factory workers, truck drivers, and nurses as well as the much poorer people who clean the houses, manicure the fingernails, and maintain the lawn of the affluent”.

Forced austerity based on the old paradigm allows the 1% super rich, the oligarchs, to grab the planets resources while pushing out the 99% from access to resources, livelihoods, jobs and any form of freedom, democracy and economic security. It is often said that with increasing growth, India and China are replicating the resource intensive and wasteful lifestyles of the Western countries. The reality is that while a small 3 to 4% of India is joining the mad race for consuming the earth with more and more automobiles and air conditioners, the large majority of India is being pushed into “de-consumption” – losing their entitlements to basic needs of food and water because of resource and land grab, market grab, and destruction of livelihoods. The hunger and malnutrition crisis in India is an example of the “de-consumption” forced on the poor by the rich, through the imposed austerity built into the trade liberalization and “economic reform” policies.

There is another paradigm emerging which is shared by Gandhi and the new movements of the 99%, the paradigm of voluntary simplicity of reducing one ecological foot print while increasing human well being for all. Instead of forced austerity that helps the rich become super rich, the powerful become totalitarian, chosen simplicity enables us all to adjust ecologically, to reduce over consumption of the planets resources, it allows us to adjust socially to enhance democracy and it creates a path for economic adjustment based on justice and equity.

Forced austerity makes the poor and working families pay for the excesses of limitless greed and accumulation by the super rich. Chosen simplicity stops these excesses and allow us to flower into an Earth Democracy where the rights and freedoms of all species and all people are protected and respected.

#### The alt is to reject their emphasis on Western-models of law in favor of a rethink of democracy from the bottom-up

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

In the complex spectrum of global law, both throughout the era of colonialism and neo-liberal US-led Western imperialism within a pattern of continuity, the rule of law, together with the theory of ‘lack’ and other powerful rhetorical arguments, has been used in order to legitimize political interventions and plunder in the ‘emerging’ economies. The sacred concept of rule of law, whose positive connotations are ‘naturally’ assumed, has been portrayed as the embodiment of a professional and neutral technology, thus being capable of substituting the lack of democratic legitimacy of the institutions that are protagonist in the creation of global law. But its dark side has never been shown or discussed. An imperial rule of law is now a dominant layer for the worldwide legal systems. It is produced, in the interest of international capital, by a variety of institutions, both public and private, all sharing a gap in political legitimacy sometimes referred to as ‘democratic deficit’.31 At the same time, law has been constructively turned into a technology and a mere component of an economic system of capitalism, thus hiding its intrinsic political nature, and annulling the relevance of local political systems, now impotent in front of the dynamics of global law. The ‘dry technology’ of the rule of law penetrates worldwide legal systems without any political discussion at the local level, attempting to create the conditions for the development of market economies, often without success, and causing serious consequences for the less powerful. Under the technology of the rule of law, in its imperial version capable of producing plunder, the essence of the United States’ law hides. In the aftermath of World War II, there was a dramatic change in the pattern of Western legal development. Leading legal ideas once produced in continental Europe and exported through the colonized world are now, for the first time, produced in a common law jurisdiction: the United States. Clearly, the present world dominance of the United States has been economic, military and political first, and only recently legal, so that a ready explanation of legal hegemony can be found within a simple conception of law as a product of the economy.32 Furthermore, US law has been capable of expanding worldwide thanks to its prestige, the high level of professionalization of its attorneys and a series of procedural institutions, that benefit plaintiffs, that allow US courts to have a certain capacity to attract jurisdiction, while showing themselves as courts for universal justice.33 The general attitude of the United States has been a very ethnocentric one, and precisely that of showing itself as the guardian of a universal legality, which it is legitimized to export through its courts of law, scholarly production, military and political intervention, and through a set of US-centric international institutions. In recent times, in particular after September 11th 2001 and the declaration of the ‘war on terror’, the US rule of law has come under attack 34, so that once admiring crowds of lawyers and intellectuals worldwide are now beginning to look upon the United States as an uncivilized old West from the perspective of legal culture, despite the professional prestige still enjoyed by the giant New York law firms and by the US academy. Notwithstanding, there has been no decline in the rhetoric of the rule of law when it comes to foreign relations. Bringing democracy and the rule of law is still used as a justification to keep intruding in foreign affairs. The same can be said for the international financial institutions and their innumerable ‘development’ projects that come packaged with the prestigious wrapping of the rule of law. A rethinking of the very idea of global law is necessary and it must derive from a revaluation of the local dimension, which is currently ignored by the neo-liberal model of development. The production of global law should change its direction, and follow a bottom-up approach, rather than a top-down one, thus being sensitive to the local particularities and complexities. Western spectacular ideas of democracy and the rule of law should be rethought. On this planet, resources are scarce, but there would be more than enough for all to live well. Nobody would admire and respect someone who, at a lunch buffet for seven, ate 90 percent of the food, leaving the other guests to share an amount insufficient for one. In a world history of capitalism in which the rule of law has reproduced this precise ‘buffet’ arrangement on the large scale, admiring the instruments used to secure such an unfair arrangement seems indeed paradoxical. People have to be free to build their own economies. There is nothing inevitable about the present arrangements and their dominant and taken-for granted certainties. Indeed, it may be that the present legal and political hegemonies suffer from lack: the lack of world culture and of global political realism.

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#### Uniqueness and Link --- recent precedent reflects the Court’s desire to preserve the Executive’s near-absolute control over migration decisions --- forcing the resettlement of former detainees crushes plenary powers

Ernesto A. Hernández-López 12, Professor, Dale E. Fowler School of Law, Chapman University, 2012, “Kiyemba, Guantánamo, and Immigration Law: An Extraterritorial Constitution in a Plenary Power World,” UC-Irvine Law Review, http://www.law.uci.edu/lawreview/vol2/no1/hernandez-lopez.pdf

Limiting judicial review through justifications of implicit autonomy in international sovereignty, the plenary power doctrine has been central to foreign relations and immigration law doctrines since it was first developed in the Chinese Exclusion Case in 1889.23 This doctrine has been a predictable, stable, and relatively untouched set of legal norms permitting courts to be “hands-off” on migration issues, thereby supporting executive and legislative immigration policies.24 It has been used historically to exclude aliens, while it now serves as a way to preclude Uighur release, despite their detention being unlawful. Importantly, the doctrine allows the political branches to devise and enforce immigration policy with a sense of security that there will not be many judicial checks.25 This autonomy, effective in court holdings and in crafting policy, has been found to be settled law.26 When the doctrine is used, courts may not review executive branch decisions regarding how to interpret or enforce immigration law.27 At times, the Supreme Court and courts in general have deviated from using the plenary power doctrine to resolve a case and instead relied on statutory canons of interpretation to limit the doctrine’s effect.28 But, these examples are isolated, typically focus on aliens inside the United States and statutory holdings, or never really apply when national security concerns are raised.29

To make sense of how these norms play out in legal disputes, Professor Stephen Legomsky describes the doctrine’s main points. He identifies six legal positions used to justify the doctrine’s normative position on judicial review: (1) the constitutionality of immigration law is inherently a political question because it is part of foreign affairs; (2) aliens are “guests” trying to assert a “privilege” as opposed to “members” of the United States asserting a “right”; (3) it is unfair for aliens to benefit from international law remedies and U.S. constitutional law; (4) aliens have no allegiance to the United States and thus cannot enjoy full constitutional protection; (5) the power to regulate immigration is inherent in sovereignty and separate from constitutional limits; and (6) for exclusion proceedings an alien has not yet entered the United States and thus constitutional limits do not apply.30 Importantly, immigration law scholarship often focuses on the issue of an alien’s territorial location.31

These six positions give weight to the legal reasoning that courts will not review immigration issues, since the political branches have plenary authority over them. Throughout U.S. history this position has been articulated in myriad ways. Plenary powers have been justified as part of international sovereignty.32 The United States’ international sovereignty is “necessarily exclusive and absolute. It is susceptible to no limitation not imposed by itself.”33 Because of this, immigration and foreign relations issues belong to the political branches, specifically the executive and Congress.34 In particular, many of the key plenary power cases coincided with protracted foreign relations contests such as Chinese Exclusion or the Cold War. These cases affirmed that a governmental power to exclude or deport foreign nationals was separate from many checks in constitutional law. Providing this autonomy for the political branches to treat migrants differently than citizens, plenary power immigration cases reflect domestic anxieties regarding foreign relations and immigration.35

The foundational plenary power cases, the Chinese Exclusion Case (1889), Nishimura v. United States (1892), and Fong Yue Ting v. United States (1893),36 excluded or deported Asians and Asian Americans with little regard for blatantly discriminatory effects and racist reasoning. The policy was to use cultural and economic justifications to exclude nonwhite migrants on the basis of race. The plenary power doctrine facilitated this policy by providing policymakers and courts with the ability to avoid constitutional limitations for noncitizens. The doctrine’s genesis was very much a racially and culturally discriminatory effort of the U.S. government.37 While its more recent applications in judicial opinions and policy pronouncements often avoid explicit racist reasoning and appear racially neutral, the doctrine still fosters racist and xenophobic forces in the law.38 This racist impact and intent has not been overlooked by courts, which refer to the doctrine as established by legal precedent despite these effects. Justice Frankfurter explained: “whether immigration laws have been crude and cruel, whether they have reflected xenophobia in general or anti-Semitism or anti-Catholicism, the responsibility belongs to Congress.”39

In summation, the plenary power doctrine has a well-established and living history of denying aliens the most basic constitutional rights in American law. This protracted relevance predates the ongoing nearly decade-long Guantánamo detentions. The doctrine’s utility in foreign relations, immigration affairs, and extraterritorial authority has contributed to cultural and national security anxieties. Its past corresponds with important social histories of U.S. foreign relations such as Chinese Exclusion and the Cold War.40 The doctrine is still employed actively by the government in its arguments in War on Terror litigation and in crafting legislation.41 Scholars had argued that various Supreme Court decisions in 2001,42 including the Supreme Court’s finding in Zadvydas v. Davis that Congress’s immigration authority is “subject to important constitutional limitations,”43 announced the plenary power doctrine’s demise.44 However, the doctrine has been reinvigorated by political and judicial responses to the War on Terror.45

#### That snowballs-leads to massive review of immigration policy and constitutional challenges

Cox 4, Chicago law school lecturer

(Adam, “Citizenship, Standing, and Immigration Law”, March, 92 Calif. L. Rev. 373, lexis)

The constitutional core of immigration law - the doctrine of Congress's plenary power over immigration - is in large part a doctrine of standing. This fact has gone generally unrecognized. Immigration scholars typically interpret plenary power doctrine as grounded either in the notion that certain constitutional constraints do not operate when Congress exercises its immigration power or in the notion that courts will not enforce those constraints in the context of immigration law. n12 As this Part shows, however, a third conception of the doctrine operates in constitutional [\*378] immigration law: courts often implicitly conceptualize the plenary power as grounded in the notion that aliens lack the right to seek meaningful judicial review of the constitutionality of immigration policy. For over a century, the doctrine of Congress's plenary power over immigration has largely insulated immigration law from constitutional challenge. n13 Both the substance and scope of this plenary power, as well as the judicial justifications for it, have developed unsteadily and remain incoherent in many respects. n14 As a result, the power's contours and underpinnings are the subject of substantial doctrinal confusion and extended academic criticism. n15 In fact, the term "plenary power" itself is an unfortunate and unhelpful phrase. The moniker does not explain what, if anything, is special about constitutional immigration law; Congress's power over many subjects is considered "plenary," but laws concerning other subjects are generally open to constitutional challenge. The term is, if anything, misleading, because it wrongly suggests that the doctrine is concerned solely with congressional "power." As this Part explains, however, the doctrine is far more conceptually complicated and ambiguous. While this complexity and ambiguity make the doctrine difficult to describe with precision, however, it is possible to identify the doctrine's basic thrust: pursuant to the doctrine, courts largely insulate immigration law from constitutional challenges.

#### Plenary powers key to prevent state regulation of immigration

**Schuck, Yalw law professor, 2007**

(Peter, “Taking Immigration Federalism Seriously”, 2007 U Chi Legal F 57, lexis, ldg)

Probably no principle in immigration law is more firmly established, or of greater antiquity, than the plenary power of the federal government to regulate immigration. n1 Equally canonical is the corollary notion, analogous to the dormant power doctrine in Commerce Clause jurisprudence, that this federal power is indivisible and therefore the states may not exercise any part of it without an express or implied delegation from Washington. Despite the plenary power doctrine's authority, it has been assailed over the years by many academics and defended, I think, by none. Questioning its source in the Constitution, fit with other bodies of law, institutional implications, internal coherence, specific applications, and policy merits, critics have called for abandoning or significantly limiting it. n2 Its detractors have also criticized the doctrine's failure to clarify how power is allocated between Congress and the President in situations where they disagree. An interesting feature of these critiques of the plenary power doctrine is that the critics seem to have no difficulty accepting its [\*58] corollary -- the principle that federal authority over immigration preempts the states from playing any independent role in the development and administration of immigration law and policy. Indeed, they enthusiastically affirm and defend it. This conjunction of positions, which might otherwise seem illogical or at least awkward, is probably best explained by ideology and politics. As I have explained elsewhere, the immigration law professoriate occupies a position at the extreme left in the national debate over immigration. n3 [\*59]

#### State immigration laws kill heg and cooperation key to solving free trade, proliferation and multilateral cooperation

**Steinberg, former Texas Public Affairs school dean, 2010**

(James, “Chapter 5 Foreign Relations”, <http://www.state.gov/documents/organization/194015.pdf>, ldg)

Second, H.B. 56 antagonizes foreign governments and their populations, both at home and in the United States, likely making them less willing to negotiate, cooperate with, or support the United States across a broad range of foreign policy issues. U.S. immigration policy and treatment of foreign nationals can directly affect the United States’ ability to negotiate and implement favorable trade and investment agreements, to secure cooperation on counterterrorism and counternarcotics trafficking operations, and to obtain desired outcomes in international bodies on priorities such as nuclear nonproliferation, among other important U.S. interests. Together with the other recently enacted state immigration laws, H.B. 56 is already complicating our efforts to pursue such interests. H.B. 56’s impact is liable to be especially acute, moreover, not only among our critical partners in the region but also among our many important democratic allies worldwide, as those governments are the most likely to be responsive to the concerns of their constituents and the treatment of their own nationals abroad. • Third, H.B. 56 threatens to undermine our standing in regional and multilateral bodies that address migration and human rights matters, and to hamper our ability to advocate effectively for the advancement of human rights and other U.S. values. Multilateral, regional, and bilateral engagement on human rights issues and international promotion of the rule of law are high priorities for the United States. Consistency in U.S. practices at home is critical for us to be able to argue for international law consistency abroad. By deviating from national policy in this area, H.B. 56 may place the United States in tension with our international obligations and commitments, and compromise our position in bilateral, regional, and multilateral conversations regarding human rights. 10. Furthermore, when H.B. 56 is considered in the context of the unprecedented surge in state legislative efforts to create state-specific immigration enforcement policies, each of these threats is significantly magnified, and several additional concerns arise. • First, by creating a patchwork of immigration regimes, states such as Alabama make it substantially more difficult for foreign nationals to understand their rights and obligations, rendering them more vulnerable to discrimination and harassment. • Second, this patchwork creates cacophony as well as confusion regarding U.S. immigration policy, and thereby undermines the United States’ ability to speak with one voice in the immigration area, with all its sensitive foreign policy implications. • Third, this patchwork fosters a perception abroad that the United States is becoming more hostile to foreign nationals, corroding a reputation for tolerance, openness, and fair treatment that is critical to our standing in international and multinational fora, our ability to attract visitors, students, and investment from overseas, our influence in a wide range of transnational contexts, and the advancement of our economic and other interests. 11. In light of these broad, overlapping, and potentially unintended ways in which immigration activities can adversely impact our foreign affairs, it is critically important that national immigration policy be governed by a uniform legal regime, and that decisions regarding the development and enforcement of immigration policy be made by the national government. In all matters that are closely linked to U.S foreign relations, including immigration, the United States is constantly engaged in weighing multiple competing considerations and choosing among priorities in order to develop an overall foreign policy strategy that will most effectively advance U.S. interests and values. The United States likewise is constantly seeking the support of foreign governments, through a delicately navigated process, across the entire range of U.S. policy goals. Only the federal government has the international relationships and information, and the national mandate and perspective, to be able to appropriately evaluate these choices on a continuing basis in response to fluctuating events on the world stage. The proliferation of state laws advancing state-specific approaches to immigration enforcement represents a serious threat to the national control over immigration policy that effective foreign policy demands.

#### Prolif causes extinction

Matthew Kroenig 12, Assistant Professor of Government, Georgetown University and Stanton Nuclear Security Fellow, Council on Foreign Relations, “The History of Proliferation Optimism: Does It Have A Future?” Prepared for the Nonproliferation Policy Education Center, May 26, 2012, <http://www.npolicy.org/article.php?aid=1182&tid=30>

Further proliferation. Nuclear proliferation poses an additional threat to international peace and security because it causes further proliferation. As former Secretary of State George Schultz once said, “proliferation begets proliferation.”[69] When one country acquires nuclear weapons, its regional adversaries, feeling threatened by its neighbor’s new nuclear capabilities, are more likely to attempt to acquire nuclear weapons in response. Indeed, the history of nuclear proliferation can be read as a chain reaction of proliferation. The United States acquired nuclear weapons in response to Nazi Germany’s crash nuclear program. The Soviet Union and China acquired nuclear weapons to counter the U.S. nuclear arsenal. The United Kingdom and France went nuclear to protect themselves from the Soviet Union. India’s bomb was meant to counter China and it, in turn, spurred Pakistan to join the nuclear club. Today, we worry that, if Iran acquires nuclear weapons, other Middle Eastern countries, such as Egypt, Iraq, Turkey, and Saudi Arabia, might desire nuclear capabilities, triggering an arms race in a strategically important and volatile region.¶ Of course, reactive proliferation does not always occur. In the early 1960s, for example, U.S. officials worried that a nuclear-armed China would cause Taiwan, Japan, India, Pakistan, and other states to acquire nuclear weapons.[70] In hindsight, we now know that they were correct in some cases, but wrong in others. Using statistical analysis, Philipp Bleek has shown that reactive proliferation is not automatic, but that rather, states are more likely to proliferate in response to neighbors when three conditions are met 1) there is an intense security rivalry between the two countries, 2) the potential proliferant state does not have a security guarantee from a nuclear-armed patron 3) and the potential proliferant state has the industrial and technical capacity to launch an indigenous nuclear program.[71] In other words, reactive proliferation is real, but it is also conditional. If Iran enters the nuclear club, therefore, it is likely that some, but not all, of the countries that we currently worry about will eventually follow suit and become nuclear powers.¶ We should worry about the spread of nuclear weapons in every case, therefore, because the problem will likely extend beyond that specific case. As Wohlstetter cautioned decades ago, proliferation is not an N problem, but an N+1 problem. Further nuclear proliferation is not necessarily a problem, of course, if the spread of nuclear weapons is irrelevant or even good for international politics as obsessionists and optimists protest. But, as the above discussion makes clear, nuclear proliferation, and the further nuclear proliferation it causes, increases the risk of nuclear war and nuclear terrorism, emboldens nuclear-armed states to be more aggressive, threatens regional stability, constrains U.S. freedom of action, and weakens America’s alliance relationships, giving us all good reason to fear the spread of nuclear weapons.

### 1NC

#### TEXT: The United States federal judiciary should rule that all persons indefinitely detained under the War Powers Authority of the President of the United States will be afforded due process protections, including but not limited to the right to habeas.

#### The United States Federal Government should issue national security waivers to transfer those individuals detained under the pretenses of the War Powers Authority of the President of the United States who have won their habeas corpus hearing or trial to a nation willing to accept such individuals, pending successful negotiations with a nation willing to accept such individual.

#### The CP solves the case --- issuing waivers guarantees that detainees can be resettled in other countries

Luke Jerod Kummer 13, congressional correspondent for The Washington Diplomat, “Will Congress Put Obama’s Push To Shutter Gitmo on Lockdown?” 8-28-13, http://www.washdiplomat.com/index.php?option=com\_content&id=9528:will-congress-put-obamas-push-to-shutter-gitmo-on-lockdown&Itemid=428

Obama did offer a detailed outline for how to transfer detainees either to ultra-secure detention facilities in the United States or to foreign countries in 2009, when he appointed Daniel Fried as the State Department's special envoy tasked with closing Guantanamo. Although the option of sending detainees to the U.S. was slapped down, Fried was able to arrange for 42 prisoners to be resettled in 18 third-party countries and for another 29 to be repatriated to their homelands. This was not a new approach at the time, as more than 500 detainees were transferred out of Guantanamo under President George W. Bush.¶ But after Congress imposed strict new restrictions on the transfers in the 2012 National Defense Authorization Act, the effort ground to a halt. Only four detainees have been relocated since the requirements took effect, according to the State Department. Fried left his post at the beginning of this year.¶ In the meantime, prisoners have been left in legal limbo even though many have been cleared for transfer, often since the Bush administration. Dozens, in fact, are still being held even though in some cases they are no longer accused of crimes against the United States and their lawyers say other countries have offered to accept them.¶ This category of detainees is one of several distinct groups among the 166 who remain at the prison. Eighty-six detainees have been cleared for transfer to either their home country or to third-party countries. Forty-six are being held because they're deemed serious threats to U.S. national security, but it's unclear whether they could be successfully prosecuted, sometimes because evidence was obtained through harsh interrogations that might have been illegal. Another 32 detainees have been referred for prosecution. There are two prisoners who have been convicted and are serving out their sentences at Guantanamo.¶ J. Wells Dixon, whose organization, the Center for Constitutional Rights, offers legal representation to eight current detainees, said there's plenty of blame to go around for the convoluted detention policy.¶ "Look, Congress has interfered with the president's desire to close Guantanamo, that's obvious," he said in July. "On the other hand, Congress did give the president some limited power to transfer individuals, and he simply hasn't used that authority."¶ Andrea Prasow, a lawyer at Human Rights Watch who focuses on counterterrorism, seemed to sum up the frustration when she spoke to The Diplomat this summer.¶ "People spend a lot of time saying the president says Congress has prevented him from closing it, and Congress says the president hasn't taken any action," Prasow told us. "It's time for people to just do something. Act. Move forward."¶ Tepid Momentum¶ After months of being stuck in the mud, the mission to close Guantanamo might just be moving forward, both because Obama has shown he'll throw some weight behind the issue and because prominent members of Congress have signaled a willingness to provide him with room to maneuver.¶ In June, Obama appointed Cliff Sloan, a well-regarded Washington lawyer who served in the administrations of Bill Clinton and George H.W. Bush, to replace Fried as special envoy for transferring approved detainees out of Guantanamo. Sloan will work with an envoy from the Pentagon who, as of press time, had not yet been named.¶ In July, the Pentagon also said it would begin setting up parole-style "periodic review boards" that would hear the cases of 71 eligible detainees. These panels were actually announced years ago, but creating them stalled for so long that the impetus seemed to evaporate.¶ And in his recent counterterrorism speech, Obama said he'd lift a moratorium on transferring detainees to Yemen that was put in place after the upheaval of the Arab Spring and the attempted 2009 bombing of a Detroit-bound airliner by a young Nigerian who was trained in Yemen. More than half of the remaining prisoners at Guantanamo are Yemeni citizens, including the bulk of the 86 detainees who've been cleared for release.¶ But the recent security threats emanating from Yemen — which contributed to the decision to shut down U.S. diplomatic missions across the Middle East last month — could jeopardize those plans.¶ "Since it's now well known that Yemen-based al Qaeda is actively plotting against us, I don't see how the president can honestly say any detainee should be transferred to Yemen," Sen. Saxby Chambliss of Georgia, the ranking Republican on the Senate Intelligence Committee, said in a statement last month.¶ Concerns about repatriating detainees to nations where they could return to the battlefield are nothing new. There would be serious blowback from any terrorist incident involving a former Gitmo prisoner — and in a sense, Congress has helped to ensure that the repercussions would land squarely on the administration.¶ Signing Off on Disaster?¶ The 2012 National Defense Authorization Act bars almost all Gitmo transfers unless they receive a special waiver from a senior administration official — and that unenviable task falls on Secretary of Defense Chuck Hagel, potentially placing him in an extremely vulnerable position. If he were to sign off on a detainee who was later linked to a terrorist attack, the defense secretary would be on the hot seat — again — just like he was during his contentious confirmation hearings.¶ "Congress decided to make this a very political issue and required someone to take personal responsibility for each transfer," said Prasow. "The person that they're holding responsible is the secretary of defense."¶ Clearly, the political risks are immense, especially as the administration relies on Hagel to help it wind down the war in Afghanistan. Dixon seemed to acknowledge as much, but he said that if Obama is committed to closing Guantanamo, he must make use of the options available to him.¶ "He should pick up the phone and call Secretary of Defense Chuck Hagel and tell him to certify transfers for approved detainees," said the lawyer, who made a special plea for Djamel Ameziane, his client who has been in the detention facility for 11 years — and cleared for release by the Pentagon since the end of the last presidency. (Ameziane's case illustrates a common dilemma for detainees and the Obama administration: A resident of Montreal, Ameziane wants to be returned to Canada and not to his native Algeria, where he fears persecution, but Canada has been reluctant take him.)¶ "It's very likely that, given politics, Congress will beat [Obama] over the head with it, so he just seems unwilling to engage in that dispute," Dixon said, offering a soupçon of empathy for the president's predicament while lamenting his reluctance to use the special waivers. "He seems unwilling to do what is necessary politically to actually effect the closure of the prison."¶ When The Diplomat contacted the White House in July to ask when Gitmo transfers would resume, Laura Lucas, a spokeswoman for the National Security Council, responded that "the president has directed the administration to transfer detainees when possible, and we are actively pursuing that."¶ "However, the extremely restrictive nature of current legislation severely limits the transfer process," Lucas said.¶ Even Obama's Republican opponents admit the issue is pocked with pitfalls. When The Diplomat asked a senior GOP congressional staffer involved in the defense bill negotiations why the waivers have collected dust, the staffer said "there are real challenges in keeping very dangerous people from re-engaging" — alluding to the difficulties of monitoring and managing detainees in poverty-wracked, poorly governed nations such as Yemen.¶ "There are no easy answers, and if you get it wrong it comes at a very high price," said the staffer.¶ Senate Support¶ But those waivers granted to the administration weren't easy to come by, either, and the people who orchestrated them — chiefly, Sen. Carl Levin (D-Mich.) — say they don't want their efforts wasted.¶ "I recognize that Congress has made the process of relocating Gitmo detainees to third countries more difficult by imposing certification requirements on such transfers," Levin, chairman of the Senate Armed Services Committee, wrote in a letter to the White House this spring. "However, more than a year ago, I successfully fought for a national security waiver that provides a clear route for the transfer of detainees to third countries in appropriate cases, i.e., to make sure the certification requirements do not constitute an effective prohibition."

# Case

## Legitimacy

### AT Kromah

#### Legitimacy and multilateralism are inevitable

Lamii Kromah 9, Dept. of IR, U Witwatersrand, The Institutional Nature of U.S. Hegemony: Post 9/11, http://wiredspace.wits.ac.za/bitstream/handle/10539/7301/MARR%2009.pdf

Since the end of World War Two (WWII) the United States (U.S.) has been enabled to maintain its leadership through its allies. U.S. leadership and hegemony is based on mutual consent by its allies: Japan, Germany and Western Europe. By institutional nature of U.S. hegemony the author is referring to how the U.S. leads by consensus among its allies and through international organizations and institutions. Despite the United States having overwhelming power capabilities in every sphereeconomic, military, and cultural -it does not act unilaterally; a close survey of its history will show that multilateralism has been and will continue to be the main facet of itsforeign policy. The period under examination is after World War Two to the end of George Walker Bush second term. The legitimacy derived from U.S. hegemony allows the U.S. to remain a super power in what could potentially be a multi polar world. The liberal regime the United States help established at the end of World War Two is what ensures and secures its primacy. Institutions like the World Bank and United Nations are regimes that are conducive for the allies to forgo harmful competition and foster cooperation. The U.S. building institutions that provide its allies with security and as plateaus to foster cooperation is what this research report examines. With Iraq being the first post 9/11 test of this theory; it should be kept in mind that the hegemon will occasionally act unilaterally but only in rare instances. Ethiopia’s invasion of Somalia is a recent example. The case of Iraq further illustrates my point because after being in Iraq for five years, the Bush administration has seen the futility in unilateralism. Research Problem In this research report I will prove that U.S. leadership is based on consent. Despite 9/11 terrorist attack the United States (U.S.), U.S. foreign policy will still be rooted in multilaterism. The benevolent regimes it created after WWII, such as the United Nations, World Bank Institutions, North Atlantic Treaty Organization, gives the incentive for nation states to cooperate. Since the end of World War Two the United States has been enabled to maintain its leadership by its allies. U.S. leadership and hegemony is based on mutual consent by its allies. The legitimacy derived from this allows the U.S. to remain a super power in what could potentially be a multi polar world. Multilateralism has always been the major tenet in United States foreign policy. The unilateral actions taken by President George W. Bush are transitory and not the norm after 9/11, such as pulling out of the Kyoto Agreement, and invasion of Iraq. In the last two years, 20062009, the administration back-tracked from its former unilateral stance and Bush Doctrine. It regularly consulted allies, international organizations, and various non governmental organizations. This is bound to continue under the new Barack Obama administration that has swiftly committed itself to multilateralism also; the first instance of this is returning the permanent representative at the United Nations to the rank of cabinet position. The foreign policy team of Obama are all committed multilateralists that believe in resolving global conflict through consensus with its allies and not against its allies. The period this research report focuses on is after World War II to George Walker Bush presidency. U.S. hegemonic order is quite unlike the earlier British hegemonic order that was immensely unstable. Since the end of WWII the U.S. has built up a network of complex interdependence that will mutually reinforce U.S. hegemonic leadership. This includes building and promoting democratic institutions in countries like Japan, and Germany. The U.S. established the Bretton Woods Agreement to ensure free trade and open markets, international organizations, like the United Nations (UN) and North Atlantic Treaty Organization (NATO), were seen as the best way of ensuring liberal institutionalism. This research report seeks to argue that U.S. leadership provided the stability and peace among the western powers WWII. To be sure, its overall material capabilities and power position have declined significantly since the early postwar years. Notwithstanding this, the proposed study seeks to provide evidence that the political institutions and structures of relations that were built under U.S. sponsorship after World War II still provide channels and routines of cooperation. America will not (and probably cannot) play the leadership role it did a generation ago, but that leadership has been reinvented in the form of a dense set of intergovernmental and transnational linkages among the major industrial countries and regions of the world. 1 These linkages will ensure the continuance of American leadership because it benefits the international system. It will also be used to prevent global conflict and ensure peace and prosperity despite the events of President George W. Bush’s foreign policy, U.S. hegemony will continue to operate on Wilisonian liberalism. 9/11 will not change the course of U.S. foreign policy which is based on multilateralism. This research report will focus on the Post 9/11 failure of unilateralism and continuance of multilateralism. I will test this hypothesis by examining the pre 9/11 structure of the U.S.-led collective security system, and also Japan, Germany’s role in supporting and aiding U.S. hegemony in the financial and conflict resolution institutional framework.

### 1NC Alt Causes

#### Plan can’t boost legitimacy or soft power---alt causes overwhelm

Kudryashov 11 - Roman Kudryashov, Researcher: Applied Politics & Economics, the New School, May 17, 2011, “Democracy Promotion in between Domestic and International Needs,” online: http://whataretheseideas.wordpress.com/2011/05/17/democracy-promotion-in-between-domestic-and-international-needs/

Additionally, America must occasionally pause for self reflection (in an attempt to understand how other people view the nation): While America advertises democratization, policy choices, alliances, and domestic conditions all run counter argument. Where the CFR report suggests switching some media programming into a C-SPAN format to show how democratic politics work (Albright p.32), I argue that the bitter partisan politics leading to budget deadlocks in congress, the radicalizing ideology of the Tea Party, George Bush’s blatant disregard of UN Security Council advice on invading Iraq, and the illegitimate politics of Wisconsin’s Scott Walker in the face of a state-wide strike advertise the failings of the American democratic system 21. As far as neoliberal policies that America packages with its democratization program go, Joseph Stieglitz points out that with the distribution of wealth in America, the nation more and more begins to resemble the autocratic regimes it is criticizing (Stieglitz 1).

As Michael Pocalyko points out at the end of the CFR dissenting views, “Abu Ghraib matters infinitely more than Americans realize. Its effects are enduring. These human rights abuses were a stunning desecration of American values and a psychological assault on Islam. No one…in the Arab nations has ‘moved on’” (Albright p.47). Likewise, Washington’s almost-axiomatic support for Israel will mean that America will be blamed by proxy for whatever conflicts and injustices arise out of the Israeli-Arab and Palestinian conflicts 22. America would do well to be careful of the image it creates for itself in international affairs---the adverse reactions to American democracy promotion confirm that Arabic civil society responds to what America does, not what it says, so a strategic planning approach concerning how America is perceived would argue for repairing America’s reputation through policy changes, before embarking on noble goals of democracy promotion.

#### PRISM destroyed soft power / credibility

Migranyan 7/5 (Andranik is the director of the Institute for Democracy and Cooperation in New York. He is also a professor at the Institute of International Relations in Moscow, a former member of the Public Chamber and a former member of the Russian Presidential Council. “Scandals Harm U.S. Soft Power,” 2013, http://nationalinterest.org/commentary/scandals-harm-us-soft-power-8695)

For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America.¶ Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized?¶ At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized.¶ On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.”¶ Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden.¶ These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail.¶ Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune.¶ Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary.¶ Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

### 1NC No Impact

#### Best evidence concludes no legitimacy impact

Brooks & Wohlforth 8 – Stephen G. Brooks, Assistant Professor of Government at Dartmouth, and William C. Wohlforth, Associate Professor of Government at Dartmouth, 2008, World Out of Balance: International Relations and the Challenge of American Primacy, p. 201-206

First, empirical studies find no clear relationship between U.S. rulebreaking, legitimacy, and the continued general propensity of other governments to comply with the overall institutional order. Case studies of U.S. unilateralism—that is, perceived violations of the multilateral principle underlying the current institutional order—reach decidedly mixed results.74 Sometimes unilateralism appears to impose costs on the United States that may derive from legitimacy problems; in other cases, these acts appear to win support internationally and eventually are accorded symbolic trappings of legitimacy; in yet others, no effect is discernable. Similar results are reported in detailed analyses of the most salient cases of U.S. noncompliance with international law, which, according to several studies, is as likely to result in a “new multilateral agreement and treaties [that] generally tilt towards U.S. policy preferences” as it is to corrode the legitimacy of accepted rules.75

The contestation created by the Bush administration’s “new unilateralism,” on the one hand, and the “new multilateralism” represented by other states’ efforts to develop new rules and institutions that appear to constrain the United States, on the other hand, fits the historical pattern of the indirect effect of power on law. Highlighting only the details of the struggle over each new rule or institution may deflect attention from the structural influence of the United States on the overall direction of change. For example, a focus on highly contested issues in the UN, such as the attempt at a second resolution authorizing the invasion of Iraq, fails to note how the institution’s whole agenda has shifted to address concerns (e.g., terrorism, proliferation) that the United States particularly cares about. The secretary-general’s Highlevel Panel on Threats, Challenges and Change endorsed a range of U.S.-supported positions on terrorism and proliferation.76 International legal scholars argue that the United States made measurable headway in inculcating new rules of customary law to legitimate its approach to fighting terrorism and containing “rogue states.”77 For example, UN Security Council Resolution 1373 imposed uniform, mandatory counterterrorist obligations on all member states and established a committee to monitor compliance.

That said, there is also evidence of resistance to U.S. attempts to rewrite rules or exempt itself from rules. Arguably the most salient example of this is the International Criminal Court (ICC). During the negotiations on the Rome Convention in the late 1990s, the United States explicitly sought to preserve great-power control over ICC jurisdiction. U.S. representatives argued that the United States needed protection from a more independent ICC in order to continue to provide the public good of global military intervention. When this logic failed to persuade the majority, U.S. officials shifted to purely legal arguments, but, as noted, these foundered on the inconsistency created by Washington’s strong support of war crimes tribunals for others. The Rome Convention rejected the U.S. view in favor of the majority position granting the ICC judicial panel authority to refer cases to court’s jurisdiction.78 By 2007, 130 states had signed the treaty and over 100 were full-fledged parties to it.

President Clinton signed the treaty, but declined to submit it to the Senate for ratification. The Bush administration “unsigned” it in order legally to be able to take action to undermine it. The United States then persuaded over 75 countries to enter into agreements under which they undertake not to send any U.S. citizen to the ICC without the United States’ consent; importantly, these agreements do not obligate the United States to investigate or prosecute any American accused of involvement in war crimes. This clearly undermines the ICC, especially given that about half the states that have signed these special agreements with the United States are also parties to the Rome Statute. 79 At the same time, the EU and other ICC supporters pressured governments not to sign special agreements with the United States, and some 45 have refused to do so—about half losing U.S. military assistance as a result. In April 2005, the United States chose not to veto a UN Security Council resolution referring the situation in Darfur, Sudan, to the ICC. To many observers, this suggests that inconsistency may yet undermine U.S. opposition to the court.80 If the U.S. campaign to thwart the court fails, and there is no compromise solution that meets some American concerns, the result will be a small but noticeable constraint: U.S. citizens involved in what might be construed as war crimes and who are not investigated and prosecuted by the U.S. legal system may have to watch where they travel.

The upshot as of 2007 was something of a stalemate on the ICC, demonstrating the limits of both the United States’ capability to quash a new legal institution it doesn’t like and the Europeans’ ability to legitimize such an institution without the United States’ participation. Similar stalemates characterize other high-profile arguments over other new international legal instruments, such as the Kyoto Protocol on Climate Change and the Ottawa Landmine Convention. Exactly as constructivists suggest, these outcomes lend credence to the argument that power does not translate unproblematically into legitimacy. What the larger pattern of evidence on rule breaking shows, however, is that this is only one part of the story; the other part involves rule breaking with few, if any, legitimacy costs, and the frequent use of go-it-alone power to revise or create rules.

AN EROSION OF THE ORDER?

The second general evidence pattern concerns whether fallout from the unpopular U.S. actions on ICC, Kyoto and Ottawa, Iraq, and many other issues have led to an erosion of the legitimacy of the larger institutional order. Constructivist theory identifies a number of reasons why institutional orders are resistant to change, so strong and sustained action is presumably necessary to precipitate a legitimacy crisis that might undermine the workings of the current order. While aspects of this order remain controversial among sections of the public and elite both in the United States and abroad, there is little evidence of a trend toward others opting out of the order or setting up alternatives. Recall also that the legitimacy argument works better in the economic than in the security realm. It is also in the economic realm that the United States arguably has the most to lose. Yet it is hard to make the empirical case that U.S. rule violations have undermined the institutional order in the economic realm. Complex rules on trade and investment have underwritten economic globalization. The United States generally favors these rules, has written and promulgated many of them, and the big story of the 1990s and 2000s is their growing scope and ramified nature—in a word, their growing legitimacy. On trade, the WTO represents a major strengthening of the GATT rules that the United States pushed for (by, in part, violating the old rules to create pressure for the upgrade). As of 2007, it had 149 members, and the only major economy remaining outside was Russia’s. And notwithstanding President Putin’s stated preference for an “alternative” WTO, Russian policy focused on accession.81 To be sure, constructivists are right that the WTO, like other rational-legal institutions, gets its legitimacy in part from the appearance of independence from the major powers.82 Critical analysts repeatedly demonstrate, however, that the organization’s core agenda remains powerfully influenced by the interests of the United States.83

Regarding international finance, the balance between the constraining and enabling properties of rules and institutions is even more favorable to the United States, and there is little evidence of general legitimacy costs. The United States retains a privileged position of influence within the International Monetary Fund and the World Bank. An example of how the scope of these institutions can expand under the radar screen of most legitimacy scholarship is International Center for Settlement of Investment Disputes (ICSID)—the major dispute settlement mechanism for investment treaties. Part of theWorld Bank group of institutions, it was established in 1966, and by 1991 it had considered only 26 disputes. With the dramatic growth in investment treaties in the 1990s, however, the ICSID came into its own. Between 1998 and 2004, over 121 disputes were registered with the Center.84 This increase reflects the rapidly growing scope of international investment law. And these new rules and treaties overwhelmingly serve to protect investors’ rights, in which the United States has a powerful interest given how much it invests overseas.

Looking beyond the economic realm, the evidence simply does not provide a basis for concluding that serial U.S. rule-breaking imposed general legitimacy costs sufficient to erode the existing order. On the contrary, it suggests a complex and malleable relationship between rule breaking, legitimacy, and compliance with the existing order that opens up numerous opportunities for the United States to use its power to change rules and limit the legitimacy costs of breaking rules. The evidence also suggests that just as rules do not automatically constrain power, power does not always smoothly translate into legitimacy. As our review of the ICC issue showed, the United States is not omnipotent, and its policies can run afoul of the problems of hypocrisy and inconsistency that constructivists and legal scholars identify. Indeed, neither the theory nor the evidence presented in this chapter can rule out the possibility that the United States might have enjoyed much more compliance, and had much more success promulgating its favored rules and quashing undesired rule change, had it not been such a rule breaker or had it pursued compensating strategies more energetically.

## Judicial Globalism

### 1NC No Impact

#### Friendly democracies can decipher between good and bad US norms, and authoritarian nations don’t care either way

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The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### No one cites the US for anything---there are too many other countries to look to---\*but the SQ solves their impacts because other countries reject excessive Presidentialism now

Mila Versteeg 13, Associate Professor at the University of Virginia School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way).

This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.

Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal.

For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.

A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries.

Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do.

Reasons for the Decline

It appears that several factors are driving the U.S. Constitution’s increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.

Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.

These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete.

### 1NC/2NC No Solvency---Facial Ruling

#### The aff is a facial ruling that doesn’t require tangible policy changes

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In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides - the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won.¶ Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases - and they prevailed overwhelmingly in their claims, especially at the Supreme Court - but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question.¶ Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead.¶ [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives.¶ Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference.¶ This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted - often bold, ambitious, and brave solutions - nonetheless fail to address the plights of the specific individuals who brought the cases.¶ This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something - an appearance not entirely false in the long run - while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

### Demo---No Solve War 1NC

#### Democratic peace is wrong

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The idea that democracy promotes peace has a long history. Thomas Paine argued that monarchs go to war to enrich themselves, but a more democratic system of government would lead to lasting peace: “What inducement has the farmer, while following the plough, to lay aside his peaceful pursuit, and go to war with the farmer of another country?” (Paine, 1985 p. 169). Immanuel Kant agreed that if “the consent of the subjects is required to determine whether there shall be war or not, nothing is more natural than that they should weigh the matter well, before undertaking such a bad business” (Kant, 1795, 1903, p. 122). More recently, the democratic peace hypothesis has influenced the “neoconservative” view of international relations (Kaplan and Kristol, 2003). U.S. policy makers of different political persuasions have invoked it in support of a policy to “seek and support the growth of democratic movements and institutions in every nation and culture.”1 But some anecdotal observations seem to support a more “realist” viewpoint. For example, after the breakup of Yugoslavia, democratic reforms were followed by war, not peace. When given a chance in the legislative elections of 2006, the Palestinians voted for Hamas, which did not have a particularly peaceful platform. Such anecdotes suggest that democratization does not always promote peace. Even fully democratic countries such as the U.S. sometimes turn aggressive: under perceived threats to the homeland, the democratically elected President George W. Bush declared war on Iraq.

We develop a simple game-theoretic model of conflict based on Baliga and Sjöström (2004). Each leader can behave aggressively or peacefully. A leader's true propensity to be aggressive, his “type”, is his private information. Since actions are strategic complements, the fear that the other leader might be an aggressive type can trigger aggression, creating a fear spiral we call “Schelling's dilemma” (see Schelling, 1960; Jervis, 1976, Jervis, 1978; Kydd, 1997). Unlike Baliga and Sjöström (2004), we assume a leader may be removed from power. Whether a leader can stay in power depends on the preferences of his citizens, the political system, and the outcome of the interaction between the two countries. The political system interacts with Schelling's dilemma to create a non-monotonic relationship between democracy and peace.

Like the leaders, citizens have different types. By hypothesis, the median type prefers to live in peace. This imposes a “dovish bias” on a dyad of two full democracies (whose leaders can be replaced by their median voters). Thus, a dyadic democratic peace is likely to obtain. However, when facing a country that is not fully democratic, the median voter may support aggression out of fear and may replace a leader who is not aggressive enough. (For example, Neville Chamberlain had to resign after appeasing Hitler.) This gives rise to a “hawkish bias”. Thus, in a fully democratic country, a dovish bias is replaced by a hawkish bias when the environment becomes more hostile. In contrast, a dictator is not responsive to the preferences of his citizens, so there is neither a hawkish nor a dovish bias. Accordingly, a dyad of two dictators is less peaceful than a fully democratic dyad, but a dictator responds less aggressively than a democratically elected leader to increased threats from abroad.

In the model, the leader of a limited democracy risks losing power if hawks in his population turn against him. For instance, the German leaders during World War I believed signing a peace agreement would lead to their demise (Asprey, 1991, pp. 486–487, 491). Conversely, the support of the hawkish minority trumps the opposition of more peaceful citizens. Thus, a limited democracy experiences a hawkish bias similar to a full democracy under threat from abroad but never a dovish bias. On balance, this makes limited democracies more aggressive than any other regime type

. In a full democracy, if the citizens feel safe, they want a dovish leader, but if they feel threatened, they want a hawkish leader. In dictatorships and limited democracies, the citizens are not powerful enough to overthrow a hawkish leader, but the leader of a limited democracy risks losing power by appearing too dovish. This generates a non-monotonic relationship between democracy and peace.

Our empirical analysis reassesses the link between democracy and peace using a flexible semiparametric functional form, where fixed effects account for unobserved heterogeneity across country dyads. We use Polity IV data to classify regimes as dictatorships, limited democracies or full democracies. Following the literature on the democratic peace hypothesis, we define a conflict as a militarized dispute in the Correlates of War data set. The data, which span over the period 1816–2000, contain many military disputes between limited democracies. In the nineteenth century, Britain had a Parliament, but even after the Great Reform Act of 1832, only about 200,000 people were allowed to vote. Those who owned property in multiple constituencies could vote multiple times.2 Hence, Britain is classified as a limited democracy for 58 years and becomes a full democracy only after 1879. France, Italy, Spain, and Germany are also limited democracies at key points in the nineteenth and early twentieth centuries. These countries, together with Russia and the Ottoman Empire, were involved in many militarized disputes in Europe and throughout the world. For much of the nineteenth century, Britain and Russia had many skirmishes and outright wars in the “Great Game” for domination of Central Asia (Hopkirk, 1990). France is also involved in many disputes and is a limited democracy during the Belgian War of Independence and the Franco-Prussian War. Germany is a limited democracy at the start of the First World War.

Over the full sample, the data strongly support a dyadic democratic peace hypothesis: dyads consisting of two full democracies are more peaceful than all other pairs of regime types. This is consistent with previous empirical studies (Babst, 1972, Levy, 1988, , maozrussett, Russett and Oneal, 2001). Over the same period, limited democracies were the most aggressive regime type. In particular, dyads consisting of two limited democracies are more likely to experience militarized disputes than any other dyads, including “mixed” dyads where the two countries have different regime types. These results are robust to changing the definitions of the three categories (using the Polity scores) and to alternative specifications of our empirical model. The effects are quantitatively significant. Parameter estimates of a linear probability model specification, suggest that the likelihood that a dyad engages in a militarized dispute falls roughly 35% if the dyad changes from a pair of limited democracies to a pair of dictatorships. We also find that if some country j faces an opponent which changes from a full democracy to another regime type, the estimated equilibrium probability of conflict increases most dramatically when country j is a full democracy. This suggests that as the environment becomes more hostile, democracies respond more aggressively than other regime types, which is also consistent with our theoretical model.

A more nuanced picture emerges when we split the data into subsamples. Before World War II, the data strongly suggest that limited democracies were the most conflict prone. It is harder to draw conclusions for the post World War II period, when very few countries are classified as limited democracies, and full democracies have very stable Polity scores. The Cold War was a special period where great power wars became almost unthinkable due to the existence of large nuclear arsenals (Gaddis, 2005). Did the weakening and demise of the Soviet Union bring a return to the pre-1945 patterns? Although the time period is arguably short, in the post-1984 period, it does seem that dyads of limited democracies are again the most prone to conflict.

It is commonly argued that a process of democratization, e.g. in the Middle East, will lead to peace (Bush, 2003). But both theory and data suggest that the relationship between democracy and peace may be complex and non-monotonic. Replacing a dictatorship with a limited democracy may actually increase the risk of militarized disputes. Even if a dictatorship is replaced by a full democracy, this may not reduce the risk of militarized disputes if the region is dominated by hostile non-democratic countries. In the data, only dyads consisting of two full democracies are peaceful. Democratic countries such as Israel and India, with hostile neighbours, do not enjoy a low level of conflict.

### AT: Iraq

#### Bagram makes their impact inevitable – Syria disproves Morgan’s impact claim too

#### No escalation to Iraq conflict --- major powers will prevent civil war

Hadar 11—former prof of IR at American U and Mount Vernon-College. PhD in IR from American U (1 July 2011, Leon, Saving U.S. Mideast Policy, http://nationalinterest.org/commentary/saving-us-policy-the-mideast-5556)

Indeed, contrary to the warning proponents of U.S. military intervention typically express, the withdrawal of American troops from Iraq and Afghanistan would not necessarily lead to more chaos and bloodshed in those countries. Russia, India and Iran—which supported the Northern Alliance that helped Washintgon topple the Taliban—and Pakistan (which once backed the Taliban) all have close ties to various ethnic and tribal groups in that country and now have a common interest in stabilizing Afghanistan and containing the rivalries.¶ A similar arrangement could be applied to Iraq where Turkey, Saudi Arabia and Iran share an interest in assisting their local allies and in restraining potential rivals—Shiites, Sunnis, Kurds and Turkmen—by preventing the sectarian tensions in Iraq from spilling into the rest of the region.¶ Hence, Turkey has already been quite successful in stabilizing and developing economic ties with the autonomous Kurdish area of Iraq while containing irredentist Kurdish pressures in northern Iraq and southern Turkey and protecting the Turkmen minority. And Turkey, together with Saudi Arabia and Iran, has played a critical role toward forming a government in Baghdad that recognizes the interests of Shiites, Sunnis, and Kurds.

# Block

## K

#### Mass suffering

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

Within this framework, Western law has constantly enjoyed a dominant position during the past centuries and today, thus being in the position to shape and bend the evolution of other legal systems worldwide. During the colonial era, continental-European powers have systematically exported their own legal systems to the colonized lands. During the past decades and today, the United States have been dominating the international arena as the most powerful economic power, exporting their own legal system to the ‘periphery’, both by itself and through a set of international institutions, behaving as a neo-colonialist within the ideology known as neoliberalism.

Western countries identify themselves as law-abiding and civilized no matter what their actual history reveals. Such identification is acquired by false knowledge and false comparison with other peoples, those who were said to ‘lack’ the rule of law, such as China, Japan, India, and the Islamic world more generally. In a similar fashion today, according to some leading economists, Third World developing countries ‘lack’ the minimal institutional systems necessary for the unfolding of a market economy.

The theory of ‘lack’ and the rhetoric of the rule of law have justified aggressive interventions from Western countries into non-Western ones. The policy of corporatization and open markets, supported today globally by the so-called Washington consensus3, was used by Western bankers and the business community in Latin America as the main vehicle to ‘open the veins’ of the continent—to borrow Eduardo Galeano’s metaphor4—with no solution of continuity between colonial and post-colonial times. Similar policy was used in Africa to facilitate the forced transfer of slaves to America, and today to facilitate the extraction of agricultural products, oil, minerals, ideas and cultural artefacts in the same countries. The policy of opening markets for free trade, used today in Afghanistan and Iraq, was used in China during the nineteenth century Opium War, in which free trade was interpreted as an obligation to buy drugs from British dealers. The policy of forcing local industries to compete on open markets was used by the British empire in Bengal, as it is today by the WTO in Asia, Africa, and Latin America.

Foreign-imposed privatization laws that facilitate unconscionable bargains at the expense of the people have been vehicles of plunder, not of legality. In all these settings the tragic human suffering produced by such plunder is simply ignored. In this context law played a major role in legalizing such practices of powerful actors against the powerless.5 Yet, this use of power is scarcely explored in the study of Western law.

The exportation of Western legal institutions from the West to the ‘rest’ has systematically been justified through the ideological use of the extremely politically strong and technically weak concept of ‘rule of law’. The notion of ‘rule of law’ is an extremely ambiguous one. Notwithstanding, within any public discussion its positive connotations have always been taken for granted. The dominant image of the rule of law is false both historically and in the present, because it does not fully acknowledge its dark side. The false representation starts from the idea that good law (which others ‘lack’) is autonomous, separate from society and its institutions, technical, non-political, non-distributive and reactive rather than proactive: more succinctly, a technological framework for an ‘efficient’ market.

### Link---Modeling

#### Notions of US legal prestige and modeling solidify global inequality by replacing political violence with legal violence---turns the case because it subordinates effective domestic systems to predatory rule of law models

Ugo Mattei 3, Alfred and Hanna Fromm Professor of International and Comparative Law, ¶ U.C. Hastings; Professore Ordinario di Diritto Civile, Università di Torino A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance, ic.ucsc.edu/~rlipsch/pol160A/Mattei.pdf

This essay attempts to develop a theory of imperial law that is able to explain postCold War changes in the general process of Americanization in legal thinking. My claim is that “imperial law” is now a dominant layer of world-wide legal systems.1 Imperial law is produced, in the interest of international capital, by a variety of both public and private institutions, all sharing a gap in legitimacy, sometimes called the “democratic deficit.” Imperial law is shaped by a spectacular process of exaggeration, aimed at building consent for the purpose of hegemonic domination. Imperial law subordinates local legal arrangements world-wide, reproducing on the global scale the same phenomenon of legal dualism that thus far has characterized the law of developing countries. Predatory economic globalization is the vehicle, the all-mighty ally, and the beneficiary of imperial law. Ironically, despite its absolute lack of democratic legitimacy, imperial law imposes as a natural necessity, by means of discursive practices branded “democracy and the rule of law,” a reactive legal philosophy that outlaws redistribution of wealth based on social solidarity.2 At the core of imperial law there is U.S. law, as transformed and adapted after the Reagan-Thatcher revolution, in the process of infiltrating the huge periphery left open after the end of the Cold War. A study of imperial law requires a careful discussion of the factors of penetration of U.S. legal consciousness world-wide, as well as a careful distinction between the context of production and the context of reception3 of the variety of institutional arrangements that make imperial law. Factors of resistance need to be fully appreciated as well.

I. AMERICAN LAW: FROM LEADERSHIP TO DOMINANCE The years following the Second World War have shown a dramatic change in the pattern of world hegemony in the law. Leading legal ideas, once produced in Continental Civilian Europe and exported through the periphery of the world, are now for the first time produced in a common law jurisdiction: the United States.4 There is little question that the present world dominance of the United States has been economic, military, and political first, and legal only in a more recent moment, so that a ready explanation of legal hegemony can be found with a simple Marxist explanation of law as a superstructure of the economy.5 Nevertheless, the question of the relationship between legal, political, and economic hegemony is not likely to be correctly addressed within a cause-and-effect paradigm.6 Ultimately, addressing this question is a very important area of basic jurisprudential research because it reveals some general aspects about the nature of law as a device of global governance.

Observing historical patterns of legal hegemony allows us to critique the distinction between two main patterns of governance through the law (and of legal transplants).7 Scholars of legal transplants have traditionally distinguished two patterns. The first is law as dominance without hegemony, in which the legal system is ultimately a coercive apparatus asserting political and economic power without consent. This area of inquiry and this model have been used to explain the relationship between the legal system of the motherland and that of the colonies within imperialistic colonial enterprises. The opposing pattern, telling a story of consensual voluntary reception by an admiring periphery of legal models developed and provided for at the center, is usually considered the most important pattern of legal transplants. It is described by stressing on the idea of consent within a notion of “prestige.”8

Little effort is necessary to challenge the sufficiency of this basic taxonomy in introducing legal transplants. Law is a detailed and complex machinery of social control that cannot function with any degree of effectiveness without some cooperation from a variety of individuals staffing legal institutions. These individuals usually consist of a professional elite which either already exists or is created by the hegemonic power. Such an elite provides the degree of consent to the reception of foreign legal ideas that is necessary for any legal transplant to occur. Hence, the distinction between imperialistic and non-imperialistic transplants is a matter only of degree and not of structure. In order to understand the nature of present legal hegemony, it is necessary to capture the way in which the law functions to build a degree of consent to the present pattern of international economic and political dominance.9

In this essay I suggest that a fundamental cultural construct of presumed consent is the rhetoric of democracy and the rule of law utilized by the imperial model of governance, 10 triumphant worldwide together with the neo-American model of capitalism developed by the Reagan and Thatcher revolution early in the 1980s. I argue that the last twenty years have produced the triumph in global governance of reactive, politically irresponsible institutions, such as the courts of law, over proactive politically accountable institutions such as direct administrative apparatuses of the State.11

This essay attempts to open a radical revision of some accepted modes of thought about the law as they appear today, at what has been called “the end of history.”12 Its aim is to discuss some ways in which global legality has been created in the present stage of world-wide legal development. It will show how democracy and the rule of law, in the present legal landscape, are just another rhetoric of legitimization of a given international dynamic of power. It will also denounce the present unconscious state in which the law is produced and developed by professional “consent building” elites. The consequences of such unconsciousness are creating a legal landscape in which the law is “naturally” giving up its role of constraining opportunistic behavior of market actors. This process results in the development of faked rules and institutions that are functional to the interests of the great capital and that dramatically enlarge inequality within society. I predict that such a legal environment is unable to avoid tragic results on a global scale such as those outlined in the well-known parable of the tragedy of the commons.13

My object of observation is a legal landscape in transition. I wish to analyze this path of transition from one political setting (the local state) to another political setting (world governance) in which American-framed reactive institutions are asserting themselves as legitimate and legitimating governing bodies, which I call imperial law. Imperial law is the product of a renowned alliance between state and economic institutions, a cooperative game in which a very limited number of powerful players are at play.14 While in the ages of colonialism such political battles for international hegemony were mostly carried on with an open use of force and political violence (in such a way that final extensive conflict between superpowers was unavoidable), in the age of globalization and of economic Empire political violence has been transformed into legal violence.

#### U.S. legal leadership enables a neocolonial agenda of global neoliberal domination---this link is phenomenally specific to their mechanism of boosting the prestige of U.S. courts in order to export legal norms and practices

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

There is a clear pattern of continuity, not of rupture, between the current policy trend in the international institutional setting and earlier practices, in particular colonialism. The Western world, under current U.S. leadership, having persuaded itself of its superior position, largely justified by its form of government, has succeeded in diffusing rule of law ideology as universally valid, behind whose shadows plunder hides, both in domestic and in international matters.

Present-day international interventions led by the United States are no longer openly colonial efforts. They might be called neo-colonial, imperialistic or simply post-colonial interventions. Although practically all of European colonial states (most notably Portugal, Spain, Great Britain, France, Germany and even Italy) regarded themselves as empires, the concept of ‘empire’ is what best describes the present phase of multinational capitalist development with the USA as the most important, hegemonic superpower, using the rule of law to pave the way for international corporate domination.

Export of the law can be described and explained in a variety of ways. A first example is the imperialistic/colonial rule, or imposition of law by military rules, as during military conquest: Napoleon imposed his Civil Code to French-occupied Belgium in the early nineteenth century. Similarly, General MacArthur imposed a variety of legal reforms based on the American government model in post World War II Japan, as a condition of the armistice in the aftermath of Hiroshima. Today, Western-style elections and a variety of other laws governing everyday life are imposed in countries under US occupation, such as Afghanistan and Iraq.

A second model can be described as imposition by bargaining, in the sense that acceptance of law is part of a subtle extortion11. Target countries are persuaded to adopt legal structures according to Western standards or face exclusion from international markets. This model describes the experience of China, Japan and Egypt in the early twentieth century, and, indeed, contemporary operations of the World Bank, IMF, the World Trade Organization (WTO) and other Western development agencies (United States Agency for International Development (USAID), European Bank for Reconstruction and Development (EBRD), and so on) in the ‘developing’ and former socialist world.

A third model, constructed as fully consensual, is diffusion by prestige, a deliberate process of institutional admiration that leads to the reception of law.12 According to this vision, because modernization requires complex legal techniques and institutional arrangements, the receiving legal system, more simple and primitive, cannot cope with the new necessities. It lacks the culture of the rule of law, something that can only be imported from the West. Every country that in its legal development has ‘imported’ Western law has thus acknowledged its ‘legal inferiority’ by admiring and thus voluntarily attempting to import Western institutions. Turkey during the time of Ataturk, Ethiopia at the time of Haile Selassie and Japan during the Meiji restoration are modern examples.

Interestingly, if the transplant ‘fails’, such as with the attempts to impose Western-style regulation on the Russian stock market, or as with many law and development enterprises, it is the recipient society that receives the blame. Local shortcomings and ‘lacks’ are said to have precluded progress in the development of the rule of law. When the World Bank produces a development report on legal issues, it invariably shows insensitivity for local complexities and suggests radical and universal transplantation of Western notions and institutions.

### Perm---2NC

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#### The permutation retains the core ontological assumptions of liberal internationalism---means it’s inevitably co-opted and fails

Oliver P. Richmond 9, professor at the School of International Relations and Director of the Centre for Peace and Conflict Studies, University of St Andrews, 2009, “A post-liberal peace: Eirenism and the everyday,” Review of International Studies, Vol. 35, p. 557-580

However, other serious issues arise with any attempt to retain, while modifying, the core of liberal peacebuilding. The neoliberal cooption of the liberal peace, its lack of social welfare frameworks and failure to mediate cultural diﬀerence, and tendency towards assimilation rather than local cultural engagement, means that it is often exceptionally abrasive when transplanted, as recent experience in Afghanistan and Iraq illustrates. In addition, there is a serious issue with its incapacity for environmentally sensitive engagement. It might be said that the conservative end of the liberal peace spectrum, as with liberal imperialism, has become an exercise in hubris for the internationals, Western states, donors, agencies and NGOs that propagate it, mainly because it lacks these sensitivities. Ethically, moving beyond these limitations would amount to an ontological commitment to care for others in their everyday contexts, based upon empathy, respect and the recognition of diﬀerence. This commitment to care has instead been displaced by a parsimonious orthodoxy that oﬀers its participants the unproblematic right of interpreting and making policy for unknowable others, normally deﬁned as states rather than people or communities. This is why the liberal peace is mainly focused on an international or regional peace, rather than an everyday form of peace.

### Impact---Turns the Case---2NC

#### Global expansion of the Western conception of rule of law enables neoliberal resource plundering---turns the whole case because it causes failed transitions that are hijacked by authoritarians

Ugo Mattei 9, Professor at Hastings College of the Law & University of Turin; and Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, LL.M. Candidate, Harvard Law School, 2009, “GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW,” online: <http://works.bepress.com/cgi/viewcontent.cgi?article=1014&context=bocconi_legal_papers>

The rule of law rhetoric has been used as a justification for ‘plunder’ (broadly definable as inequitable distribution of resources by the strong at the expenses of the weak), thus backing a claim that it has been used ‘illegally’. This can be identified as ‘the dark side of the rule of law’, which is kept silent from any public discussion. In order to deeply understand both sides of the rule of law, the close connection of such concept with the ideal of democracy has to be disentangled, and on the contrary its close association with practices of ‘plunder’ has to be recognized.

In the dominant liberal democratic tradition the rule of law has at least two different aggregates of meaning. In the first, the rule of law refers to institutions that secure property rights against governmental taking and that guarantee contractual obligations. This is the meaning of rule of law invoked by Western businessmen interested in investing abroad. International institutions such as the World Bank or the International Monetary Fund (IMF) often charge the lack of the rule of law as the main reason for insufficient foreign investment in poor countries. The rule of law is thus interpreted as the backbone of an ideal market economy. Normative recipes for market liberalization and opening up of local markets to foreign investment thus come packaged with the prestigious wrapping of the rule of law.

According to the second approach, which relates to a liberal political tradition rooted in ‘natural law’ and in the more secular form of ‘rational law’, society should be governed by the law and not by a human being acting as a ruler (sub lege, non sub homine). The law is impersonal, abstract and fair because it is applied mechanically to anyone in society, and a system is effectively governed by the rule of law when its leaders are under its restraint.

Some conservatives might favour the first meaning, protecting property and contracts. The second meaning, providing rights, is a favourite of the moderate left and of many international human rights activists seeking to do good by the use of the law (the ‘do-gooders’). Perhaps someone located in the so-called ‘Third world’ would claim to be a champion of both meanings, which appear to merge in the recent, comprehensive definition of the World Bank: ‘The rule of law requires transparent legislation, fair laws, predictable enforcement, and accountable governments to maintain order, promote the private sector growth, fight poverty and have legitimacy’.8

A system can be governed by the rule of law in one or the other sense. There are systems in which property rights are worshipped but that are still governed by ruthless, unrestricted leaders. President Fujimori’s Peru or Pinochet’s Chile are good recent examples of such arrangements, but many other authoritarian governments presently in office mainly in Africa, Asia and Latin America that follow the ‘good governance’ prescriptions of the World Bank also fall in this category.

In other systems, with good human rights credentials, governments interpret their role as significantly redistributive. Property rights may not be sacred, and a variety of ‘social theories’ may limit their extension or curtail them without compensation. In such settings, quite often, courts and scholars might develop theories that limit the enforcement of contracts in the name of justice and social solidarity. Consequently, they might fit the second but not the first definition ofthe rule of law. Scandinavian countries, amplifying attitudes shared at one time or another in history by a number of continental legal traditions such as France, Germany and Italy (or the United States’ New Deal), might offer such a model in Western societies.

Western countries have developed a strong identity as being governed by the rule of law, no matter what the actual history or the present situation might be. Such identity is obtained—as is the usual pattern—by comparison with ‘the other’, almost invariably portrayed as ‘lacking’ the rule of law.

Based on the idea that others ‘lack’ the rule of law, many external interventions have been enacted in the so-called ‘developing countries’ by Western actors. Many of such interventions, instead of being beneficial for the local society, have shown the possibility for the law to be used as an instrument of oppression and plunder, ironically representing an ‘illegal’ use of the rule of law.9

### Statebuilding Alt---Bottom Up

#### Refuse the 1AC’s call for liberal internationalism---the question of the debate shouldn’t focus on centralized models of peacebuilding---their demand for a concrete alternative reflects Western methodological bias that reproduces failed statebuilding models---rejecting liberal statebuilding brings a slew of peaceful local alternatives into view

Oliver P. Richmond 10, professor at the School of International Relations and Director of the Centre for Peace and Conflict Studies, University of St Andrews, October 29, 2010, “What Is Your Alternative?,” online: http://www.opendemocracy.net/oliver-p-richmond/what-is-your-alternative

The phrase ‘what is your alternative?’ is often heard in response to criticisms of the liberal peace. This is like saying, ‘resistance is futile’. The liberal peacebuilding and statebuilding framework is regarded as the highest achievement of modern society – a way of taming the violence of state formation. Compliance with this hierarchical schema is demanded like a proof of identity (the author was once told off at a major international conference for appearing ‘anti-liberal’!). In a post-colonial era of pluralism, diversity, and the promotion of development, there is a somewhat contradictory desire for a centralised model of peace, to be led by key international actors and donors, who together will maintain the dominant liberal and neoliberal version of the state, together with its associated knowledge systems. Its proponents appear to be in constant fear of a sudden leadership challenge from inferior or alien forms of peace.

It might be better to recognise the changes that have already occurred to the liberal peace model - from Timor where the rational state is being mediated by a customary and traditional order, to Guatemala where the indigenous population is increasingly holding the neoliberal state accountable to an alternative life-world, and Afghanistan, where a range of actors (some quite unsavoury) have begun to demand and receive accommodation in the political process.

To begin to understand such processes, and how they may contribute to a peaceful order in a positive sense, which is locally relevant, is far more important than maintaining the liberal state or even the global economy in its current form. Ultimately, this request for an alternative fails to recognise the implications of such processes and maintains the exclusiveness and exclusionary dynamics of the liberal peace. It is a form of censorship that negates any kind of peace not organised in a similar fashion to that of a liberal peace. It is a power claim, couched in terms of an elite knowledge, designed either to preserve northern hegemony, or simply resulting from a methodological bias towards security, rights, and institutions, as seen via northern, rational problem-solving approaches. These biases write out the voices, needs, rights, and socio-historical milieu of many of the world’s citizens in post-conflict and development settings beyond the global north. They evacuate the local and replace it with western modes of politics and economy - with western hegemony- however well-meaning- expressed through peacebuilding, statebuilding, aid and development.

Such statements also mistake the target of our critique. Critics like myself are not ‘in it’ for ideological reasons, or even to produce a new narrative for peacebuilding, also controlled by those who have created it. It is not to be troublesome, or to present new idealistic visions of an alternative for the many post-conflict citizens of the world. Instead we are trying to restore to the centre of debate, and to the centre of the very processes of peacebuilding or statebuilding, the political subjects who are the reason for their existence.

Ironically, liberal peacebuilding and statebuilding have forgotten the situation of their subjects - the needs, rights, and historical, contextual milieu of the post-conflict citizen. The critique’s central engagement with peace confuses many commentators who are used to thinking about exporting ‘flat-pack’ assemblages for state reform: programming that mirrors some idealised western experience. It also confuses those who think liberalism represents the ‘end of history’ and so the ultimate form of peace. It also confuses those who are concerned with states, institutions, and power, and believe that organised and large scale mobilisation is the only form of progressive politics. They are often more used to thinking in terms of - and defending - power, sovereignty, institutions, territory and markets (with ‘rights’ as a rhetorical flourish).

Of course liberalism is flexible about the right of critique, which after all is the engine of progress in Enlightenment terms. So it is peculiar that, for many, it is almost taboo to critique the liberal peace. There is an unwillingness to recognise that exported grand political projects may not succeed, or that power disappears or is wasted on white elephant projects. Meanwhile, local political subjects, aware of their own context, can make peace for themselves and also crave autonomy. Even in post-conflict settings, it is the citizens who either give legitimacy to peacebuilding, statebuilding, and development projects run by externals, or withdraw it. Yet rampant interventionism together with a civilising mission have replaced processes of local and national enablement and support. Nevertheless, it is an inconvenient fact that local subjects in all sorts of post-conflict settings around the world, have found ways of transforming the liberal peace project, despite its apparent hegemony. Sometimes this appears commensurate with international norms, human rights, and democracy, and sometimes not. But local contexts and the associated norms of a liberal peace are modifying each other.

So the answer to the question, what is the alternative? - is to look around the world and see how many modifications and alternatives are actually out there, coming into being in post-conflict settings and driven by local capacity.

Some appear more conducive to forms of peace than others - but this calculation should rest on the level of local legitimacy, representation, and engagement with needs, assessments which should then be incorporated into international understandings of legitimacy rather than the other way around. There are many different types of state, some nuanced versions of liberal states, others neoliberal, others centralised, some decentralised, others authoritarian, some social democracies, some ethnically majoritarian, some power sharing, federal, confederal, some representative democracies, some participatory, some representing a national myth, some based on religion or socialism, some balancing many identities, many adopting and developing particular strategies in the global economy, and so on. This diversity is reflected in both regional arrangements and in local and contextual forms of politics, too.

This is far more the reality than the current banality of liberal peace/neoliberal state vs local anarchy/ failed states that mark much of the west’s rather colonial view of the world. It is no wonder that there has been a post-colonial reaction against this from many states and emerging donors, the BRICs, and of course, civil society and customary actors, and individual citizens concerned with their identity, global inequality, and the local resonance of the peace, the state, regional and global order they desire.

So, a far more plausible research strategy for peacebuilding and statebuilding would look at the impact such local agencies, norms, institutions, and capacity have on the liberal peace and states-system, processes of state formation, and vice-versa. This would develop and protect local, state, and regional dynamics of peace, pluralism and diversity, institutions, law, and rights as well as dealing with needs (which has been one of the most problematic omissions of the liberal peace system). It would prevent the hijack of peacebuilding and statebuilding for ideological ends, and would mitigate the unintended consequences of the dominant northern methodological bias towards security, power, state and institutions - especially on human life. I would argue that such research reflects what is already occurring rather than a policy driven attempt to create external compliance. We are already beyond the liberal peace.

Luddites might defend it, and want to be taken to the hypothetical leader of the daring challenge against the liberal peace and neoliberal state (if only to attempt a citizen’s arrest), but the more significant research project is about how the dominant models are being modified and reformed by their supposedly weak subjects, who are utilising their own institutions, context, and rights of representation - as democracy intends - though against the odds. This form of critical and local agency is not just modifying the liberal peace but it is a challenge to the centralised and state-centric notions of power and norms that this peace is organised around. They are leading and producing hybrid, post-liberal forms of peace. To resist this would be futile: to enable, assist, and mediate it would be a better strategy.

### Link---Liberal Peace

[in AT pinker democratic peace]

#### Democratic/liberal peace theory ignores the violence that goes into creating pliant regimes willing to trade with the US---naturalizes mass violence in the interim and makes long term collapse inevitable

Herman 12—professor emeritus of finance at the Wharton School, University of Pennsylvania (Edward, 7/25/12, Reality Denial : Steven Pinker's Apologetics for Western-Imperial Volence, http://www.zcommunications.org/reality-denial-steven-pinkers-apologetics-for-western-imperial-volence-by-edward-s-herman-and-david-peterson-1)

Pinker’s establishment ideology kicks-in very clearly in his comparative treatment of communism, on the one hand, and democracy and capitalism, on the other. He is explicit that whereas communism is a “utopian” and dangerous “ideology” from which most of the world’s serious violence allegedly flowed during the past century, democracy, capitalism, “markets,” “gentle commerce,” and the like, are all tied to liberalism—or more exactly to “classical liberalism.”[133] These institutional forms are not the result of ideologies, much less utopian and dangerous; they are the historically more advanced permutations of the Leviathan that help to elicit those components of the neurobiology of peaceableness (or “better angels” as opposed to “inner demons”) for which the human brain has been naturally selected over evolutionary time. Hence, they are sources of the alleged decline in violence, and their spread is a force for positive and more peaceful change in the world.[134]¶ Not so communism. At the outset of Chapter 6, “The New Peace,” Pinker approvingly quotes Aleksandr Solzhenitsyn’s line that, unlike the communists, “Shakespeare’s evildoers stopped short at a dozen corpses [b]ecause they had no ideology” driving them. (295) In discussing the alleged mental traits of the members of a society mobilized to commit genocide, he argues that “Utopian creeds that submerge individuals into moralized categories may take root in powerful regimes and engage their full destructive might,” and highlights “Marxism during the purges, expulsions, and terror-famines in Stalin’s Soviet Union, Mao’s China, and Pol Pot’s Cambodia.” (328) In his 2002 book, The Blank Slate: The Modern Denial of Human Nature, he devoted several pages to what he called the “Marxist genocides of the twentieth century,” and noted that “Historians are currently debating whether the Communists’ mass-executions, forced marches, slave labor, and man-made famines led to one hundred million deaths or ‘only’ twenty-five million.”[135] And in the section of the current book titled “The Trajectory of Genocide,” Pinker cites the authority of the “democratic peace” theorist and “atrocitologist” Rudolph Rummel, who in his 1994 book Death By Government wrote that whereas “totalitarian communist governments slaughter their people by the tens of millions[,]…many democracies can barely bring themselves to execute serial murderers.”[136] (357)¶ As we have seen, Pinker rewrites history to accommodate this familiar establishment perspective, so that the Cold War was rooted in communist expansionism and U.S. efforts at containment, and the several million deaths in the Korean and Vietnam wars were attributable to the communists’ fanatical unwillingness to surrender to superior force, not to anti-communist and racist attitudes that facilitated the U.S. military’s mass killings of distant peoples. He deals with U.S. state-capitalism’s support and sponsorship of the corrupt open-door dictatorships of Suharto, Marcos, Mobutu, Pinochet, Diem, the Greek Colonels, and the National Security States of Latin America (among many others), and the “burgeoning” of torture following the end of the Cold War, by eye aversion. ¶ In Pinker’s view, the Third World’s troubled areas are suffering from their failure to absorb the civilizing lessons modeled for them in the United States and other advanced countries. He ignores the eight-decades-long massive U.S. investment in the military and ideological training, political takeovers, and subsequent support of Third World dictators in numerous U.S. client terror states, including Guatemala, transformed from a democracy to terror state in 1954, Brazil, shifted from a democracy to military dictatorship in 1964, the Philippines in 1972, and Chile the same in 1973, among many others. A tabulation by one of the present authors in 1979 found that 26 of the 35 states in that era that used torture on an administrative basis were U.S. clients, all of them recipients of U.S. military and economic aid.[137] These clients were capitalist in structure, but threatened and employed force to keep the lower orders disorganized and more serviceable to the local elites and transnational corporations investing there. One Latin American Church document of that period spoke of the local U.S.-supported regimes as imposing an economic model so repressive that it “provoked a revolution that did not exist.”[138] This was a deliberate “decivilizing” process, with the civilized serving as co-managers.¶ We have seen that Pinker finds the modern era peaceful by focusing on the absence of war between the major powers, downplaying the many murderous wars carried out by the West (and mainly the United States) against small countries, and falsely suggesting that the lesser-country conflicts are home-grown, even where, as in the cases of Iraq and Afghanistan, it was U.S. military assaults that precipitated the internal armed conflicts, with the United States then actively participating in them. The Israeli occupation and multi-decade ethnic cleansing of Palestine he misrepresents as a “cycle of deadly revenge,” with only Israel fighting against “terrorism” in this cycle. He speaks of Islamic and communist ideology as displaying violent tendencies, and congratulates the U.S. military for allegedly overcoming the kind of racist attitudes reported at the time of the Vietnam war (U.S. soldiers referring to Vietnamese as “gooks,” slopes,” and the like)—but the military’s new humanism is another piece of Pinker misinformation and pro-war propaganda. And he fails to cite the numerous instances of Israeli leaders referring to Palestinians as “grasshoppers,” “beasts walking on two legs,” “crocodiles,” “insects,” and a “cancer,” or Israeli rabbis decrying them as the “Amalekites” of the present era, calling for extermination of these unchosen people.[139]¶ As regards Israel, Pinker never mentions the Israeli belief in a “promised land” and “chosen people” who may be fulfilling God’s will in dispossessing Palestinians.[140] Although the lack of angelic behavior in these assaults and this language, ethnic cleansing, and dispossession process is dramatic, and has had important effects on the attitudes and behavior of Islamic peoples, it fails to fit Pinker’s ideological system and political agenda, and therefore is not a case of conflict with ideological roots. ¶ For Pinker, there is also nothing ideological in the “miracle of the market” (Reagan), no “stark utopia” in Friedrich von Hayek’s assertion that the “particulars of a spontaneous order cannot be just or unjust,”[141] no ideology in the faith that an unconstrained free market will not produce intolerable inequalities and majority resistance that in turn require the likes of Pinochet, Suharto, or Hitler to reassert the requisite “stability.” It is simply outside of Pinker’s orbit of thought that liberalism and neoliberalism in the post-Soviet world are ideologies that have serviced an elite in a class war; that the major struggles and crises that we have witnessed, over climate change, the massive upward redistribution of income and wealth, the global surge of disposable workers, and the enlargement of NATO and the police-and-surveillance state, are features of a revitalized consolidation of class power, under more angelic names like “reform,” “free markets,” “flexibility,” “stability,” and “fiscal discipline.” For Pinker, the huge growth of the prison population shows the lack of “self-control” of the incarcerated savages still with us; and it is one merit of the liberal state that it gets the bad guys off the streets. ¶ Another device that Pinker uses when weighing capitalism versus communism is to take notorious state abuses committed in the name of communism (e.g., under Joseph Stalin), not as perversions of communism, but as inherent in its ideology, and flowing directly from it. Many historians and leftists have long argued that Stalinism constituted a radical betrayal and perversion of genuine communism, and that it emerged out of crises and stresses that made anything approaching genuine communism unreachable.[142] Pinker never addresses this kind of explanation and exemption of real-world communism, but he does this implicitly for real-world degenerate forms of capitalism. Thus, Nazi Germany and its mass murders are not credited to capitalism’s account, even though Germany under the Nazis was still capitalist in economic form and surely a variant of capitalism arising under stress and threat from below, with important business support.[143] Suharto’s Indonesia and Pinochet’s Chile could be said to fit this same pattern. Rightwing believers in the crucial importance of free markets, such as Friedrich von Hayek and Milton Friedman, approved of Pinochet’s rule, which ended political freedom and freedom of thought, but worked undeviatingly for corporate interests and rights. But it took only one decade of the Chicago Boys’ privatizations and other “reforms” for Chile’s economy and financial system to collapse. In the harsh depression that ensued, the banks were re-nationalized and their foreign creditors bailed-out in a process sometimes called the “Chicago Road to Socialism,” but then shortly thereafter they were re-privatized all over again, at bargain-basement prices.[144] (Pinochet does not show up in Pinker’s index; Chile does, but never as a free market state loved by von Hayek, Friedman, and the Chicago School of Economics, and supported by the United States.)¶ In one of his book’s more outlandish moments, Pinker even allocates Nazism and the holocaust to communism. He writes that since “Hitler read Marx in 1913,” Marxism led definitively if “more circuitously” to the “[dekamegamurders] committed by the Nazi regime in Germany.”[145] (343) But while there is no evidence that Hitler really examined Marx or accepted any of his or his fellow Marxist writers’ ideas,[146] it is incontestable fact that Hitler held Marxism in contempt, and that communism and communists ranked very high among Hitler’s and the Nazi’s demons and targets (along with Jews) when they held power in Germany.[147] So is the fact that racist theories and “mismeasure of man” literature in the Houston Stewart Chamberlain tradition—of which Richard Herrnstein and Charles Murray arguably are heirs—were fanatically embraced by Hitler, and therefore linked to Nazism—and not very “circuitously,” either. ¶ Pinker not only doesn’t credit the Nazi holocaust to capitalism, he also fails to give capitalism credit for the extermination of the Native Americans in the Western Hemisphere and the huge death tolls from the Slave Trades,[148] which should have been prevented by the rising “better angels.” As noted, he also ignores democratic capitalism’s responsibility for the surge of colonialism in the 18th and 19th centuries, the associated holocausts,[149] and the death-dealing and exploitation of the Western-sponsored terror states in Indonesia, the Philippines, Latin America and elsewhere. He also fails to address the huge toll of structural violence under capitalism flowing from its domestic and global dispossession processes, and, interestingly, intensifying with the post-1979 transformation of China and the breakup of the Soviet bloc and Soviet Union (1989-1991), which reduced any need on the part of Western capitalism to show concern for the well-being of its own working class majority. This helps explain the significant global increases in inequality and dispossession and slum-city enlargement over the past two decades, a period that Pinker calls the “New Peace” and depicts as an age of accelerating “Civilization”!¶ Pinker refers to the deaths during China’s Great Leap Forward (1958-1961) as a “Mao masterminded…famine that killed between 20 million and 30 million people.”[150] (331) For Pinker, clearly, the dead were victims of a deliberate policy that demonstrates the evil behind communist ideology. But as the development economists Jean Drèze and Amartya Sen have pointed out, China under Mao installed a massive and effective system of public medical services, as well as literacy and nutrition programs that greatly benefitted the general population in the years prior to the famine—a fact that is difficult to reconcile with the allegation that Mao regarded mass starvation as an acceptable means to some other end. Instead, Drèze and Sen blamed this tragedy on the lack of democracy in China, with the absence of pressure from below and a lack of timely knowledge of policy failure significantly offsetting the life-saving benefits of communist China’s medical and other social welfare programs.[151] ¶ Drèze and Sen also compared the number of deaths caused by this famine under Mao with the number of deaths caused by what they called the “endemic undernutrition and deprivation” that afflicts India’s population year-in and year-out. “Estimates of extra mortality [from China’s famine] vary from 16.5 million to 29.5 million,” they wrote, “arguably the largest in terms of total excess mortality in recorded history.”[152] But “despite the gigantic size of excess mortality in the Chinese famine,” they continued, the “extra mortality in India from regular deprivation in normal times vastly overshadows the former. Comparing India’s death rate of 12 per thousand with China’s 7 per thousand, and applying that difference to India’s population of 781 million in 1986, we get an estimate of excess normal mortality in India of 3.9 million per year. This implies that every eight years or so more people die in India because of its higher death rate than died in China in the gigantic famine….India seems to manage to fill its cupboard with more skeletons every eight years than China put there in its years of famine.”[153] Indeed, by 2005, some 46 percent (or 31 million) of India’s children were underweight, and 79 percent suffered anemia. “Forty years of efforts to raise how much food-grains Indians are able to eat has been destroyed by a mere dozen years of economic reform,” Jawaharal Nehru University economist Utsa Patnaik observes.[154]

## Democracy

### No Model/No JI Model

#### We should’ve learned by now

Nathan Brown 11, professor of political science and international affairs at George Washington University and nonresident senior associate at the Carnegie Endowment for International Peace. November 8, 2011, Americans, put away your quills, mideast.foreignpolicy.com/posts/2011/11/08/americans\_put\_away\_your\_quills

Later this month, the representatives just elected by Tunisian voters will begin the task of designing a new political order for the country. If all goes well (though it may not) Egyptians and Libyans will follow suit by drafting new constitutions. It is still not inconceivable that other Arab societies will join them in an attempt to reinvent political systems on a more democratic basis. People in these societies are about to engage in an unprecedented process for them -- while they have all lived under constitutions before, those documents generally enabled authoritarian government. Now they want to write constitutions that will allow them to live democratically. As Americans, this seems to be a story we know well -- a people rises up, throws off oppression, and then deliberates carefully how to write a set of rules for a new republican order fit for a free people. Therefore, we will soon hear lots of well-meaning advice on how Arab societies should write their constitutions and what those constitutions should say.

We saw in Iraq how much U.S. understanding of the constitution drafting process was colored by the U.S. experience. Commentators rushed to speak about a "Philadelphia moment," recommended favorite clauses from the Bill of Rights, and even argued over judicial review by reference to Marbury vs. Madison or Roe vs. Wade. We should have learned our lesson: much of our advice will be bad and most will be irrelevant.

First, when outsiders give advice, they tend to ask an abstract question: what would be the best constitution for a given society? Not only do they often know little about that society, they forget that constitution writing is a supremely political process. It is not carried out by philosopher kings but pushed through by real political forces playing a gritty political game. Despite what some of us may dimly remember from junior high school U.S. History, our process was no different. Constitutional kibitzing rarely finds an enthusiastic audience. After the initial election in the various Arab countries, the constitution will be the first test of the new balance of political forces -- and it will be the first real opportunity for them to discover not simply how to compete, but how to cooperate. Even more important than the text they produce, the patterns of interaction they establish as they draft will produce lasting patterns for politics. They need to keep their eyes on each other -- and that is precisely what they will do.

Second, there are few points of entry for foreigners to press their ideas. Where states have failed or been occupied, international advice and even oversight has had a strong role. But the Tunisian and Egyptian states are very much intact and unoccupied. While NATO planes helped to advance the revolution, they will likely play little role in Libya's constitutional process. Instead it is powerful indigenous structures and actors who will guide the process. And when it comes to fundamental questions about their political futures, they tend to prefer the answers that they themselves give. Tunisians debating the country's identity -- so far the biggest hot button issue in constitutional debates -- are hardly likely to pull in foreign consultants to draft language. The Egyptian committee of one hundred people is unlikely to want to be seen as allowing outsiders to vet their work in a political context in which "foreign agendas" are the topic of daily denunciations in the press.

Third, the Arab world actually has a long set of constitutional traditions that will serve as the reservoir for drafting efforts. Tunisia received its first constitution when France was an empire and Germany was not yet a state. Egypt has a long and rich tradition of constitutional experiments dating back almost as long. Much of that heritage is deeply troubled to be sure, but most Arab societies are full of people who already speak their own constitutional language. Constitutional law professors and lawyers have already begun to play prominent political roles. And when they find something troubling in past documents, they generally react by attempting to write the precise opposite of detested practices into the constitution. Constitutional drafters in most countries act like generals fighting the last war. It is their own history that serves as a positive and negative model, not that of the United States. And while this attitude can lead to some odd results (drafters in Iraq, for instance, tried hard to make a military coup unconstitutional), the attitude is, by and large, sensible. Constitutions have made a difference in Arab politics (as Egypt found when its rulers tottered and were revealed to have booby trapped the constitutional documents to make a gentle transition virtually impossible to negotiate). But those documents, while significant, have not been democratic. The problem lay not in their general promises, which were lofty, but in their fine print. Now there is a chance to fix that -- not by borrowing still more lofty phrases from foreign documents but by carefully rewriting the details and closing the loopholes of the ones they already have.

Fourth, when Arabs turn outwards to spot analogous cases, they are more likely to look to Europe and selected other countries (such as South Africa) where they are far more likely to find some similarities both in historical experience and constitutional structures. The U.S. experience, rich as it is, is very idiosyncratic. From a constitutional perspective, the United States is a marsupial: exotic and sometimes even cuddly, but also a product of a completely different evolutionary path. The U.S. attempt to graft some familiar structures, terms, and concepts familiar into the Iraqi text often left Iraqi politicians baffled -- and largely had to be abandoned as the United States finally concluded that any constitution Iraqis agreed upon was better than one that made sense to Americans.

#### No model and the US isn’t key---other countries fear a strong judiciary

Miguel Schor 8, Professor of Law @ Suffolk University Law School, “Judicial Review and American Constitutional Exceptionalism,” Osgoode Hall Law Journal, Vol. 46, 2008

This article questions the conventional wisdom that the logic of Marbury has conquered the world’s democracies by exploring two questions: why do social movements contest constitutional meaning by fighting over judicial appointments in the United States, and why does such a strategy make little sense in democracies that constitutionalized rights in the late twentieth century?6 The short answer is that the United States has been both a model and an anti-model 7 in the worldwide spread of judicial review. The United States stood astride the world after the Second World War and elements of American constitutionalism such as judicial review proved irresistible to democracies around the globe.8 Polities that adopted judicial review in the late twentieth century, however, rejected the key assumption on which judicial review in the United States is founded.. American constitutionalism assumes that law is separate from politics and that courts have the power and the duty to maintain that distinction.

This assumption was rejected because other democracies learned from the American experience that courts that exercise judicial review are powerful political as well as legal actors. The fear of providing constitutional courts with too much power played an important role in shaping judicial review outside the United States. 9 When judicial review began to spread around the globe in the second half of the twentieth century, the hope of Marbury (the promise of constitutionalized rights) became fused with the fear of Lochner 10 (the possibility that courts might run amok). In seeking to thread a needle between Marbury and Lochner , the American assumption that a constitution is a species of law was rejected in favour of a very different baseline assumption that constitutions are neither law nor politics, but an entirely new genus of “political law.” 11Consequently, democracies abroad adopted stronger mechanisms by which citizens can hold constitutional courts accountable 12and which make it less likely that social forces will use appointments as a vehicle for constitutional battles. Pg. 37-38

### Demo---Inev 1NC

#### Global democracy inevitable

Tow 10—Director of the Future Planet Research Centre (David, Future Society- The Future of Democracy, 26 August 2010, http://www.australia.to/2010/index.php?option=com\_content&view=article&id=4280:future-society-the-future-of-democracy&catid=76:david-tow&Itemid=230)

Democracy, as with all other processes engineered by human civilisation, is evolving at a rapid rate. A number of indicators are pointing to a major leap forward, encompassing a more public participatory form of democratic model and the harnessing of the expert intelligence of the Web. By the middle of the 21st century, such a global version of the democratic process will be largely in place. Democracy has a long evolutionary history. The concept of democracy - the notion that men and women have the right to govern themselves, was practised at around 2,500 BP in Athens. The Athenian polity or political body, granted all citizens the right to be heard and to participate in the major decisions affecting their rights and well-being. The City State demanded services and loyalty from the individual in return. There is evidence however that the role of popular assembly actually arose earlier in some Phoenician cities such as Sidon and Babylon in the ancient assemblies of Syria- Mesopotamia, as an organ of local government and justice. As demonstrated in these early periods, democracy, although imperfect, offered each individual a stake in the nation’s collective decision-making processes. It therefore provided a greater incentive for each individual to cooperate to increase group productivity. Through a more open decision process, improved innovation and consequently additional wealth was generated and distributed more equitably. An increase in overall economic wellbeing in turn generated more possibilities and potential to acquire knowledge, education and employment, coupled with greater individual choice and freedom. According to the Freedom House Report, an independent survey of political and civil liberties around the globe, the world has made great strides towards democracy in the 20th and 21st centuries. In 1900 there were 25 restricted democracies in existence covering an eighth of the world’s population, but none that could be judged as based on universal suffrage. The US and Britain denied voting rights to women and in the case of the US, also to African Americans. But at the end of the 20th century 119 of the world’s 192 nations were declared electoral democracies. In the current century, democracy continues to spread through Africa and Asia and significantly also the Middle East, with over 130 states in various stages of democratic evolution. Dictatorships or quasi democratic one party states still exist in Africa, Asia and the middle east with regimes such as China, North Korea, Zimbabwe, Burma, the Sudan, Belarus and Saudi Arabia, seeking to maintain total control over their populations. However two thirds of sub-Saharan countries have staged elections in the past ten years, with coups becoming less common and internal wars gradually waning. African nations are also starting to police human rights in their own region. African Union peacekeepers are now deployed in Darfur and are working with UN peacekeepers in the Democratic Republic of the Congo. The evolution of democracy can also be seen in terms of improved human rights. The United Nations Universal Declaration of Human Rights and several ensuing legal treaties, define political, cultural and economic rights as well as the rights of women, children, ethnic groups and religions. This declaration is intended to create a global safety net of rights applicable to all peoples everywhere, with no exceptions. It also recognises the principle of the subordination of national sovereignty to the universality of human rights; the dignity and worth of human life beyond the jurisdiction of any State. The global spread of democracy is now also irreversibly linked to the new cooperative globalisation model. The EU, despite its growing pains, provides a compelling template; complementing national decisions in the supra-national interest at the commercial, financial, legal, health and research sharing level. The global spread of new technology and knowledge also provides the opportunity for developing countries to gain a quantum leap in material wellbeing; an essential prerequisite for a stable democracy. The current cyber-based advances therefore presage a much more interactive public form of democracy and mark the next phase in its ongoing evolution. Web 2.0’s social networking, blogging, messaging and video services have already significantly changed the way people discuss political issues and exchange ideas beyond national boundaries. In addition a number of popular sites exist as forums to actively harness individual opinions and encourage debate about contentious topics, funnelling them to political processes. These are often coupled to online petitions, allowing the public to deliver requests to Government and receive a committed response. In addition there are a plethora of specialized smart search engines and analytical tools aimed at locating and interpreting information about divisive and complex topics such as global warming and medical stem cell advances. These are increasingly linked to Argumentation frameworks and Game theory, aimed at supporting the logical basis of arguments, negotiation and other structured forms of group decision-making. New logic and statistical tools can also provide inference and evaluation mechanisms to better assess the evidence for a particular hypothesis. By 2030 it is likely that such ‘intelligence-based’ algorithms will be capable of automating the analysis and advice provided to politicians, at a similar level of quality and expertise as that offered by the best human advisers. It might be argued that there is still a need for the role of politicians and leaders in assessing and prioritising such expert advice in the overriding national interest. But a moment’s reflection leads to the opposite conclusion. Politicians have party allegiances and internal obligations that can and do create serious conflicts of interest and skew the best advice. History is replete with such disastrous decisions based on false premises, driven by party political bias and populist fads predicated on flawed knowledge. One needs to look no further in recent times than the patently inadequate evidential basis for the US’s war in Iraq which has cost at least half a million civilian lives and is still unresolved. However there remains a disjunction between the developed west and those developing countries only now recovering from colonisation, the subsequent domination by dictators and fascist regimes and ongoing natural disasters. There is in fact a time gap of several hundred years between the democratic trajectory of the west and east, which these countries are endeavouring to bridge within a generation; often creating serious short-term challenges and cultural dislocations. A very powerful enabler for the spread of democracy as mentioned is the Internet/Web- today’s storehouse of the world’s information and expertise. By increasing the flow of essential intelligence it facilitates transparency, reduces corruption, empowers dissidents and ensures governments are more responsive to their citizen’s needs. Ii is already providing the infrastructure for the emergence of a more democratic society; empowering all people to have direct input into critical decision processes affecting their lives, without the distortion of political intermediaries. By 2040 more democratic outcomes for all populations on the planet will be the norm. Critical and urgent decisions relating to global warming, financial regulation, economic allocation of scarce resources such as food and water, humanitarian rights and refugee migration etc, will to be sifted through community knowledge, resulting in truly representative and equitable global governance. Implementation of the democratic process itself will continue to evolve with new forms of e-voting and governance supervision, which will include the active participation of advocacy groups supported by a consensus of expert knowledge via the Intelligent Web 4.0. Over time democracy as with all other social processes, will evolve to best suit the needs of its human environment. It will emerge as a networked model- a non-hierarchical, resilient protocol, responsive to rapid social change. Such distributed forms of government will involve local communities, operating with the best expert advice from the ground up; the opposite of political party self-interested power and superficial focus-group decision-making, as implemented by many current political systems. These are frequently unresponsive to legitimate minority group needs and can be easily corrupted by powerful lobby groups, such as those employed by the heavy carbon emitters in the global warming debate.

### AT: Iraq/ME War

#### Iraq instability doesn’t escalate

Cook 7 [Steven A. Cook and Ray Takeyh, fellows at the Council on Foreign Relations, Brookings Institution, International Herald Tribune, “Why the Iraq war won't engulf the Mideast,” 6-28-2007, www.iht.com/articles/2007/06/28/opinion/edtakeyh.php]

It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country.

Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq.

The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq.

Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict.

Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries.

In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom.

Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight.

Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight.

As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary.

So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq.

The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, the region has also developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.

Iraq's civil war is the latest tragedy of this hapless region, but still a tragedy whose consequences are likely to be less severe than both supporters and opponents of Bush's war profess.

## T

#### Law of war detention is NOT indefinite detention

Kellenberger 12 [Dr Jakob Kellenberger, President of the International Committee of the Red Cross, “Confronting Complexity Through Law: The Case for Reason, Vision and Humanity,” Apr 3 2012, http://intercrossblog.icrc.org/blog/kellenberger-grotius-lecture-asil-case-reason-vision-and-humanity]

Let me insert a bracket here and note the increasingly widespread use of the term “indefinite detention” as being synonymous with “law of war” detention. This is very unfortunate, as it may serve to create a perception of acceptability where none should exist. With the exception of prisoner of war internment in international armed, the internment of any other person for imperative reasons of security in international armed conflict must end as soon as the reasons justifying it cease to exist. The same rule should be applied by analogy to internment in non-international armed conflicts. Initial and periodic review processes are provided for precisely because there is no assumption that a person will automatically constitute an imperative security threat until the end of an armed conflict. Each case has to be examined initially on the merits, and periodically thereafter, to assess whether the threat level posed remains the same. In view of the rapid progression of events in armed conflict, the assessment may, and in most cases does, change. There is also the outer temporal limit of internment, which is the close of active hostilities. Thus, to somehow imply that IHL allows indefinite detention as such risks misrepresenting the spirit and letter of this body of rules.

## GSPEC

### Overview

#### The affirmative must explicitly cite legal grounds in the plan

#### They make legal research impossible – conceded argument since grounds are the basis for legal opinions

Dragich 95 - Martha J. Dragich, Associate Professor of Law at Missouri-Columbia, 2-1995 44 Am. U.L. Rev. 757

A published opinion is the "working tool of lawyers and the building block of judges." 145 Opinion writing facilitates the decisionmaking process by sharpening analysis, 146 and by imposing a sense of responsibility and discipline on judges. 147 When writing opinions, judges must determine whether their decisions are [\*782] consistent with and faithful to prior decisions, and whether the opinions establish certain and predictable rules for future cases. 148 Published opinions are the tangible evidence of the law's evolution and foreshadow its future development. 149 Without published opinions, the basic tasks of legal research and analysis would be impossible for attorneys and judges. 150

#### Non-specification undermines solvency and tanks court legitimacy

Martha J. Dragich, Associate Professor of Law at Missouri-Columbia, 2-1995 44 Am. U.L. Rev. 757

The published judicial opinion 1 is the "heart of the common law system." 2 Judicial opinions are a critical component of what we understand to be the "law." 3 In fact, a legal system's existence cannot be recognized "until the decisions of [its] courts are regularly published and are available to the bench and bar." 4 To the extent our "law" is embodied in precedents, published opinions are the authoritative sources of law**.** Indeed, stare decisis cannot operate in the absence of published opinions. 5 Opinions "are what courts do, not just what they say[;] they are the substance of judicial action." 6 Courts ensure the legitimacy of their decisions by preparing and [\*759] publishing opinions that explain and justify their reasoning. And judges and lawyers are utterly dependent upon published opinions to research, evaluate, argue, and decide cases -- the most basic of legal tasks. Yet over the past two decades, the federal courts of appeals have regularly employed practices that reduce the roles and uses of published judicial opinions. 7 This Article examines three of those practices: selective publication, summary disposition, and vacatur upon settlement. Part I describes each practice. Part II establishes the critical importance of federal courts of appeals' opinions. After reviewing the manner in which the law develops through case-by-case adjudication, Part II examines the close connection between the history of opinion publication and the doctrine of stare decisis. Next, it defines five core values -- stability, certainty, predictability, consistency, and fidelity to authority -- that are prerequisites to a legitimate legal system, and suggests ways in which published opinions facilitate the operation of these core values in a system where law develops through adjudication. Finally, Part II examines the role of opinions as essential tools in the two main activities of lawyers and judges: researching and applying the law. [\*760] Part III uses recent cases to illustrate how selective publication, summary disposition, and vacatur upon settlement impede the development of a coherent body of decisional law, frustrate lawyers and judges in performing their daily tasks, and threaten the legitimacy of the federal courts. This Article concludes that while efficiency is a proper concern, the courts of appeals currently overvalue it at the expense of the broader purposes they must serve in our legal system. Accordingly, this Article proposes that federal courts of appeals should (1) operate under presumptions favoring publication, (2) develop broader awareness of the many uses of precedent, and (3) publish full opinions in cases where they reverse the lower court decision or fail to reach a unanimous decision.

### AT: We Meet

#### The plan includes no grounds for its decision other than “can’t be detained”---it’s an incomplete depiction of Court agenda-setting

Gerhardt 5 - Michael Gerhardt, Professor at William & Mary Law School, 4-2005 7 U. Pa. J. Const. L. 903

This critique fails, however, to grapple with many, if not all, of the most significant insights and research of institutionalists. Institutionalists recognize that understanding the Court requires doing more than merely aggregating the individual votes of the Justices. They also appreciate the implications of the specific institutional context in which Supreme Court Justices operate. Fundamental to their project is recognizing that the institutional context in which Justices operate has substantive effects (for instance, by imposing certain norms), while attitudinalists and rational choice theorists suggest that the Court largely, if not wholly, operates as a cipher for the Justices' individual preferences. While rational choice theory suggests that the different orderings and intensities of preference among the individual Justices might produce inconsistent outcomes, institutionalists seek to illuminate patterns in the Court's decision making that can be fairly attributable to the Court as such. The institutionalist objective is to determine the operative norms of constitutional adjudication, including the Court's distinctive practices.

## Legitimacy

### No Impact to Heg

#### No impact to hegemony

Friedman 10—research fellow in defense and homeland security, Cato. PhD candidate in pol sci, MIT (Ben, Military Restraint and Defense Savings, 20 July 2010, http://www.cato.org/testimony/ct-bf-07202010.html)

Another argument for high military spending is that U.S. military hegemony underlies global stability. Our forces and alliance commitments dampen conflict between potential rivals like China and Japan, we are told, preventing them from fighting wars that would disrupt trade and cost us more than the military spending that would have prevented war. The theoretical and empirical foundation for this claim is weak. It overestimates both the American military's contribution to international stability and the danger that instability abroad poses to Americans. In Western Europe, U.S. forces now contribute little to peace, at best making the tiny odds of war among states there slightly more so.7 Even in Asia, where there is more tension, the history of international relations suggests that without U.S. military deployments potential rivals, especially those separated by sea like Japan and China, will generally achieve a stable balance of power rather than fight. In other cases, as with our bases in Saudi Arabia between the Iraq wars, U.S. forces probably create more unrestthan they prevent. Our force deployments can also generate instability by prompting states to develop nuclear weapons. Even when wars occur, their economic impact is likely to be limited here.8 By linking markets, globalization provides supply alternatives for the goods we consume, including oil. If political upheaval disrupts supply in one location, suppliers elsewhere will take our orders. Prices may increase, but markets adjust. That makes American consumers less dependent on any particular supply source, undermining the claim that we need to use force to prevent unrest in supplier nations or secure trade routes.9 Part of the confusion about the value of hegemony comes from misunderstanding the Cold War. People tend to assume, falsely, that our activist foreign policy, with troops forward supporting allies, not only caused the Soviet Union's collapse but is obviously a good thing even without such a rival. Forgotten is the sensible notion that alliances are a necessary evil occasionally tolerated to balance a particularly threatening enemy. The main justification for creating our Cold War alliances was the fear that Communist nations could conquer or capture by insurrection the industrial centers in Western Europe and Japan and then harness enough of that wealth to threaten us — either directly or by forcing us to become a garrison state at ruinous cost. We kept troops in South Korea after 1953 for fear that the North would otherwise overrun it. But these alliances outlasted the conditions that caused them. During the Cold War, Japan, Western Europe and South Korea grew wealthy enough to defend themselves. We should let them. These alliances heighten our force requirements and threaten to drag us into wars, while providing no obvious benefit.

### No Aggressive Rise

#### No transition wars

Parent 11—assistant for of pol sci, U Miami. PhD in pol sci, Columbia—and—Paul MacDonald—assistant prof of pol sci, Williams (Joseph, Graceful Decline?;The Surprising Success of Great Power Retrenchment, Intl. Security, Spring 1, p. 7)

Some observers might dispute our conclusions, arguing that hegemonic transitions are more conflict prone than other moments of acute relative decline. We counter that there are deductive and empirical reasons to doubt this argument. Theoretically, hegemonic powers should actually find it easier to manage acute relative decline. Fallen hegemons still have formidable capability, which threatens grave harm to any state that tries to cross them. Further, they are no longer the top target for balancing coalitions, and recovering hegemons may be influential because they can play a pivotal role in alliance formation. In addition, hegemonic powers, almost by definition, possess more extensive overseas commitments; they should be able to more readily identify and eliminate extraneous burdens without exposing vulnerabilities or exciting domestic populations.

We believe the empirical record supports these conclusions. In particular, periods of hegemonic transition do not appear more conflict prone than those of acute decline. The last reversal at the pinnacle of power was the Anglo-American transition, which took place around 1872 and was resolved without armed confrontation.

The tenor of that transition may have been influenced by a number of factors: both states were democratic maritime empires, the United States was slowly emerging from the Civil War, and Great Britain could likely coast on a large lead in domestic capital stock. Although China and the United States differ in regime type, similar factors may work to cushion the impending Sino-American transition. Both are large, relatively secure continental great powers, a fact that mitigates potential geopolitical competition. 93 China faces a variety of domestic political challenges, including strains among rival regions, which may complicate its ability to sustain its economic performance or engage in foreign policy adventurism. 94